

<p style="text-align: right;">Page 5</p> <p>1 Wolfson</p> <p>2 GARTH SETH WOLFSON, called as a witness</p> <p>3 by the Defendants, having been duly</p> <p>4 sworn, testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. WINTON:</p> <p>7 Q. Would you state your name for the</p> <p>8 record please?</p> <p>9 A. Garth Seth Wolfson.</p> <p>10 Q. Mr. Wolfson, it is my</p> <p>11 understanding that you are an attorney</p> <p>12 admitted to practice in the State of New</p> <p>13 York?</p> <p>14 A. Yes, I am.</p> <p>15 Q. And you are a partner in the law</p> <p>16 firm of Mahoney & Keane?</p> <p>17 A. That's correct.</p> <p>18 Q. We are here in your offices for</p> <p>19 your deposition today, correct?</p> <p>20 A. Yes, we are.</p> <p>21 Q. I assume that you have -- this may</p> <p>22 be the first time you have ever been deposed</p> <p>23 but you have taken lots of depositions,</p> <p>24 right?</p> <p>25 A. It is the first time I have been</p>	<p style="text-align: right;">Page 7</p> <p>1 Wolfson</p> <p>2 rest of it in 1997.</p> <p>3 Q. I apologize. I just added 20</p> <p>4 years to your life. I am a '77 graduate so</p> <p>5 that is why that number popped up. Sorry.</p> <p>6 It is my understanding that your</p> <p>7 involvement in this matter was sort of in, I</p> <p>8 suppose in three different capacities; you</p> <p>9 executed a trust agreement with a letter</p> <p>10 that contained terms of a trust with</p> <p>11 American Energy Services that I will often</p> <p>12 refer to as AES; is that correct?</p> <p>13 A. I don't know what you mean by</p> <p>14 "three different capacities." I did sign</p> <p>15 that letter. Some would call it a side</p> <p>16 letter, some called it a trust agreement,</p> <p>17 whatever you want to characterize it. I did</p> <p>18 sign that.</p> <p>19 Q. Who calls it a side letter?</p> <p>20 A. I believe I called it a side</p> <p>21 letter in certain correspondence which is in</p> <p>22 the file.</p> <p>23 Q. AES has never referred to it as a</p> <p>24 side letter, have they?</p> <p>25 A. I don't specifically recall them</p>
<p style="text-align: right;">Page 6</p> <p>1 Wolfson</p> <p>2 deposed and I have taken many depositions.</p> <p>3 I don't know what many is. More than 100</p> <p>4 easily.</p> <p>5 Q. I wasn't going to ask you for a</p> <p>6 number because I don't think any of us could</p> <p>7 accurately state what that is.</p> <p>8 What I was really getting to is we</p> <p>9 don't have to go through all the rules about</p> <p>10 depositions I assume and cut to the chase?</p> <p>11 A. Sure.</p> <p>12 Q. Okay. How long have you been</p> <p>13 admitted to practice law in New York?</p> <p>14 A. I believe since 1997.</p> <p>15 Q. Where did you graduate from law</p> <p>16 school?</p> <p>17 A. George Washington University.</p> <p>18 Q. And have you been with Mahoney &</p> <p>19 Keane since 1977?</p> <p>20 A. I believe I started in the fall of</p> <p>21 1996.</p> <p>22 Q. I am sorry.</p> <p>23 A. I believe I started in the fall of</p> <p>24 1996 before I was admitted and then I was</p> <p>25 admitted after passing the bar and all the</p>	<p style="text-align: right;">Page 8</p> <p>1 Wolfson</p> <p>2 referring to it as anything in particular.</p> <p>3 Q. And in fact that letter is the</p> <p>4 only agreement you are aware of that AES</p> <p>5 entered, correct?</p> <p>6 A. Written agreement?</p> <p>7 Q. Yes, sir.</p> <p>8 A. It is the only written agreement I</p> <p>9 know of although I know they have made</p> <p>10 allegations all through this. I don't mean</p> <p>11 to suggest they are right or wrong on that</p> <p>12 score.</p> <p>13 Q. "They" being plaintiff Milestone?</p> <p>14 A. Yes.</p> <p>15 Q. You also are the signatory to an</p> <p>16 escrow agreement that we will talk about and</p> <p>17 we will talk about the side letter.</p> <p>18 A. Sure.</p> <p>19 Q. You also signed an escrow</p> <p>20 agreement, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And it is my understanding that</p> <p>23 you and Mahoney & Keane also acted as</p> <p>24 counsel to Milestone in this matter relating</p> <p>25 to the charter party between Milestone and</p>

<p style="text-align: right;">Page 9</p> <p>1 Wolfson</p> <p>2 Estech Trading LLC which I will refer to as</p> <p>3 Estech; is that correct?</p> <p>4 A. It is not really correct, no.</p> <p>5 We were retained as escrow agent.</p> <p>6 We were approached to act as an escrow agent</p> <p>7 and we agreed to act as escrow agent.</p> <p>8 I believe over the years we have a</p> <p>9 relationship with More Fisher Brown as we do</p> <p>10 with other solicitors in England and other</p> <p>11 lawyers around the world and sometimes we</p> <p>12 are asked questions and give answers as</p> <p>13 counsel. Sometimes they are referring</p> <p>14 counsel. Sometimes they act in concert on</p> <p>15 cases with an international dimension.</p> <p>16 In this case looking through the</p> <p>17 file he did ask me a legal question. I</p> <p>18 construed a legal question about assignments</p> <p>19 that had something to do with this and I</p> <p>20 gave them an off the cuff answer just</p> <p>21 casually but my role was limited to being</p> <p>22 escrow agent as far as the escrow agreement</p> <p>23 was concerned and for that matter this side</p> <p>24 letter or trust agreement.</p> <p>25 Q. You in fact gave legal advice to</p>	<p style="text-align: right;">Page 11</p> <p>1 Wolfson</p> <p>2 that that legal advice was limited to that</p> <p>3 one question about assignments.</p> <p>4 It had nothing to do with the</p> <p>5 escrow agreement.</p> <p>6 Q. We will -- you have produced your</p> <p>7 billing records and we will come to those</p> <p>8 and we can talk about that a little bit</p> <p>9 more.</p> <p>10 A. Sure.</p> <p>11 Q. You mentioned, I am sorry, that</p> <p>12 you have done some work for More Fisher</p> <p>13 Brown, you being Mahoney & Keane?</p> <p>14 A. I would not say we don't work for</p> <p>15 them. What it is is sometimes there will be</p> <p>16 a client and there will be, for example, an</p> <p>17 arbitration in London and a proceeding in</p> <p>18 New York, for example, like this proceeding.</p> <p>19 There will be a proceeding in</p> <p>20 which case we will both be acting for the</p> <p>21 same client and they might be referring</p> <p>22 solicitors.</p> <p>23 Similarly, there might be other</p> <p>24 instances where you have large casualties</p> <p>25 with litigation or arbitration in multiple</p>
<p style="text-align: right;">Page 10</p> <p>1 Wolfson</p> <p>2 him with regard to a partial assignment of a</p> <p>3 letter of credit that was to secure the</p> <p>4 performance of this charter party between</p> <p>5 Estech and Milestone, correct?</p> <p>6 A. That is what I was just referring</p> <p>7 to, yes.</p> <p>8 Q. Okay. And you, in fact, billed</p> <p>9 Milestone for your services in rendering</p> <p>10 that opinion, correct, the time you put in?</p> <p>11 A. I probably -- I believe my work</p> <p>12 was predominantly just December 1 and</p> <p>13 December 2 and as I recall there was a lot</p> <p>14 of time spent doing various tasks, probably</p> <p>15 billed for it altogether so my short answer</p> <p>16 to your question is yes, I think I did.</p> <p>17 Q. So that is how I got to three</p> <p>18 different capacities.</p> <p>19 One, trustee under the December 2</p> <p>20 trust agreement, escrow agent under the, and</p> <p>21 I am not sure the date, December 2 escrow</p> <p>22 agreement and then also rendering legal</p> <p>23 advice at the request of Mark Seward of More</p> <p>24 Fisher Brown?</p> <p>25 A. Yes, as long as it is understood</p>	<p style="text-align: right;">Page 12</p> <p>1 Wolfson</p> <p>2 fora and we might be working for the same</p> <p>3 team.</p> <p>4 I know there are instances where</p> <p>5 More Fisher Brown have been involved with my</p> <p>6 adversaries. So we have worked both on the</p> <p>7 same side and opposite sides but we were</p> <p>8 never working -- representing More Fisher</p> <p>9 Brown in an action where More Fisher Brown</p> <p>10 is a party. It would be a situation where</p> <p>11 we have mutual clients.</p> <p>12 Q. And that was sloppy on my part.</p> <p>13 The relationship with More Fisher</p> <p>14 Brown is as referring counsel, is that a</p> <p>15 fair statement?</p> <p>16 A. Sometimes it is referring counsel.</p> <p>17 Sometimes as the referring counsel to my</p> <p>18 adversaries and sometimes just -- they just</p> <p>19 happen to be assigned by the same client so</p> <p>20 they didn't refer us to them but the same</p> <p>21 client hired us both.</p> <p>22 It is not just More Fisher Brown.</p> <p>23 It is many different firms over in London in</p> <p>24 particular.</p> <p>25 Q. Sure. And that is pretty common</p>

<p style="text-align: right;">Page 13</p> <p>1 Wolfson</p> <p>2 with maritime firms in New York?</p> <p>3 A. Yes, it is.</p> <p>4 Q. They have relationships with</p> <p>5 solicitors in London who refer cases to</p> <p>6 them.</p> <p>7 And I hear what you are saying</p> <p>8 that at times they are referring counsel for</p> <p>9 your opponent?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall how many times</p> <p>12 Mahoney & Keane has acted as New York</p> <p>13 counsel on a referral from More Fisher Brown</p> <p>14 where you were on the same side?</p> <p>15 A. It is hard to recall. In the past</p> <p>16 since the infamous case of Winterstorm there</p> <p>17 was a lot of Rule B activity and many</p> <p>18 maritime firms were very, very busy with</p> <p>19 Rule B work most of which was referred from</p> <p>20 London in particular because Rule B work is</p> <p>21 to secure the results of London arbitration.</p> <p>22 So the majority of my experience</p> <p>23 personally with More Fisher Brown has been</p> <p>24 in that context and so since the Second</p> <p>25 Circuit overturned Winterstorm, there has</p>	<p style="text-align: right;">Page 15</p> <p>1 Wolfson</p> <p>2 prior to this particular action, is that</p> <p>3 your understanding?</p> <p>4 A. I don't recall that.</p> <p>5 MR. WINTON: Would you mark this</p> <p>6 as Exhibit 1?</p> <p>7 Off the record.</p> <p>8 (Discussion off the record)</p> <p>9 (Complaint was marked Exhibit 1</p> <p>10 for identification)</p> <p>11 BY MR. WINTON:</p> <p>12 Q. Mr. Wolfson, the court reporter</p> <p>13 has handed you what we marked as Exhibit 1.</p> <p>14 I apologize. I don't have</p> <p>15 multiple copies of that.</p> <p>16 Wait a minute. Lawyers are the</p> <p>17 worst witnesses and I am sure that was true</p> <p>18 when my deposition was taken but let me get</p> <p>19 the question out before you start going.</p> <p>20 So I have handed you or the court</p> <p>21 reporter has handed you what we marked as</p> <p>22 Exhibit 1 which is a complaint in a matter</p> <p>23 called Namviet Shipping versus somebody or</p> <p>24 other or somebody versus Namviet. I am</p> <p>25 looking at it upside down. I am sorry.</p>
<p style="text-align: right;">Page 14</p> <p>1 Wolfson</p> <p>2 been practically none of that work coming in</p> <p>3 and it is really hard for me to estimate how</p> <p>4 many cases they referred. Probably more</p> <p>5 than ten. But also probably certainly less</p> <p>6 than 50 for example. It is hard to even</p> <p>7 come up with a number. But during that time</p> <p>8 we had hundreds of Rule B cases probably.</p> <p>9 Q. In each of those cases were you</p> <p>10 working with Mark Seward of More Fisher</p> <p>11 Brown?</p> <p>12 A. No.</p> <p>13 Q. How many times have you worked</p> <p>14 with Mr. Seward?</p> <p>15 A. Again it is very difficult to say.</p> <p>16 I don't know. I am taking a stab in the</p> <p>17 dark, maybe 20 times at most.</p> <p>18 Q. Have you been to London and met</p> <p>19 with him?</p> <p>20 A. No.</p> <p>21 Q. Has he been to New York and met</p> <p>22 with you here?</p> <p>23 A. No.</p> <p>24 Q. It is also my understanding that</p> <p>25 Mahoney & Keane has represented Milestone</p>	<p style="text-align: right;">Page 16</p> <p>1 Wolfson</p> <p>2 Milestone versus Namviet. I think</p> <p>3 if you look at the signature page you will</p> <p>4 see that complaint was filed by Mahoney &</p> <p>5 Keane?</p> <p>6 A. Yes. It looks like this is a</p> <p>7 complaint that was signed by my partner.</p> <p>8 I personally don't recall any role</p> <p>9 in this and have no personal recollection of</p> <p>10 it as I said but I don't doubt that it is</p> <p>11 entirely possible that this could have --</p> <p>12 that we did this. I mean, no reason to</p> <p>13 doubt the authenticity of this document.</p> <p>14 If you are testing my recollection</p> <p>15 I certainly have no recollection of ever</p> <p>16 being involved in this nor do I recall who</p> <p>17 referred it to us.</p> <p>18 MR. KEANE: I will stipulate that</p> <p>19 it is our file and we were counsel.</p> <p>20 BY MR. WINTON:</p> <p>21 Q. This is dated February 13, 2009.</p> <p>22 A. 2009.</p> <p>23 Q. So looking at that does not</p> <p>24 refresh your recollection?</p> <p>25 A. I have no recollection of that.</p>

<p style="text-align: right;">Page 17</p> <p>1 Wolfson</p> <p>2 Q. Did you testify earlier that you</p> <p>3 have no recollection of Mahoney & Keane</p> <p>4 representing Milestone Shipping other than</p> <p>5 this matter that we are here to talk about</p> <p>6 today and obviously you have seen this and</p> <p>7 heard Mr. Keane's stipulation?</p> <p>8 A. Right. That is my recollection.</p> <p>9 I personally have no recollection of ever</p> <p>10 working for Milestone before.</p> <p>11 You have showed me this document.</p> <p>12 It has been stipulated so obviously the firm</p> <p>13 has represented Milestone through Mr. Keane.</p> <p>14 Q. How many attorneys do you have at</p> <p>15 Mahoney & Keane?</p> <p>16 A. Six.</p> <p>17 Q. How many partners?</p> <p>18 A. Three.</p> <p>19 Q. How many of them are active?</p> <p>20 A. I don't know what you mean by</p> <p>21 "active."</p> <p>22 Q. Is Mr. Mahoney still actively</p> <p>23 practicing?</p> <p>24 A. Yes.</p> <p>25 Q. It would be Mr. Mahoney, Mr. Keane</p>	<p style="text-align: right;">Page 19</p> <p>1 Wolfson</p> <p>2 formal subpoena.</p> <p>3 MR. WINTON: Would you mark this</p> <p>4 as Exhibit 4?</p> <p>5 (Letter from Mr. Wolfson to Mr.</p> <p>6 Winton was marked Exhibit 4 for</p> <p>7 identification)</p> <p>8 BY MR. WINTON:</p> <p>9 Q. Would you take a look at the</p> <p>10 document that the court reporter has marked</p> <p>11 Exhibit 4?</p> <p>12 A. Sure.</p> <p>13 Q. Do you recognize that to be your</p> <p>14 letter to me that accompanied your</p> <p>15 production of documents?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Do you see in there a reference</p> <p>18 indicating that you claim no privilege but</p> <p>19 you are not necessarily waiving any</p> <p>20 privilege?</p> <p>21 A. Yes. We basically are reserving</p> <p>22 our objections to the extent we have any and</p> <p>23 I gave you everything I could dig up on</p> <p>24 this.</p> <p>25 Q. So did you withhold any documents</p>
<p style="text-align: right;">Page 18</p> <p>1 Wolfson</p> <p>2 and you are the three partners?</p> <p>3 A. Yes.</p> <p>4 MR. WINTON: Mark this as Exhibit</p> <p>5 2.</p> <p>6 (Cover letter was marked Exhibit 2</p> <p>7 for identification)</p> <p>8 MR. WINTON: Mark this as Exhibit</p> <p>9 3.</p> <p>10 (Subpoena Duces Tecum was marked</p> <p>11 Exhibit 3 for identification)</p> <p>12 BY MR. WINTON:</p> <p>13 Q. Mr. Wolfson, the court reporter</p> <p>14 has handed you what we marked as Exhibits 2</p> <p>15 and 3.</p> <p>16 Would you take a look at those</p> <p>17 please?</p> <p>18 A. I am looking at them.</p> <p>19 Q. I assume you recognize those as a</p> <p>20 cover letter and a subpoena DT that I sent</p> <p>21 to you for documents in this matter?</p> <p>22 A. Yes. As I recall we discussed the</p> <p>23 matter and I agreed to produce the documents</p> <p>24 voluntarily and to accept the subpoena</p> <p>25 voluntarily since you preferred to serve a</p>	<p style="text-align: right;">Page 20</p> <p>1 Wolfson</p> <p>2 based on privilege?</p> <p>3 A. Well, you asked for every</p> <p>4 communication over the last several years</p> <p>5 between myself and my partner for example.</p> <p>6 As I said in my letter I don't</p> <p>7 think that was really your intent to the</p> <p>8 extent it was then, yes, I object to the</p> <p>9 extent it is vague, overbroad and unduly</p> <p>10 burdensome. We can call the court right now</p> <p>11 about it.</p> <p>12 You similarly asked for every</p> <p>13 communication over the years with More</p> <p>14 Fisher Brown.</p> <p>15 Similarly, I would say the same</p> <p>16 thing. We have acted as co-counsel together</p> <p>17 for certain cases but I have given you</p> <p>18 everything regarding this matter including</p> <p>19 the opinion on assignments and to the extent</p> <p>20 you wish to characterize that as us acting</p> <p>21 as counsel and to the extent the court</p> <p>22 agrees then, for example, the privilege</p> <p>23 might apply there and we don't wish to waive</p> <p>24 it.</p> <p>25 Q. You correctly interpreted my</p>

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<p>1 Wolfson</p> <p>2 request not to be a request for every</p> <p>3 communication you ever had with your partner</p> <p>4 on any subject but was intended to relate</p> <p>5 solely to this case.</p> <p>6 A. Jim, I gave you everything I could</p> <p>7 find on this case, including my billing</p> <p>8 slips, including everything that couldn't</p> <p>9 even arguably relate to this case.</p> <p>10 Q. When you say "billing slips," what</p> <p>11 are those?</p> <p>12 A. My bill.</p> <p>13 Q. Your bill?</p> <p>14 A. Yes.</p> <p>15 Q. I have rough time charges I made</p> <p>16 in addition to the final that comes out from</p> <p>17 the firm so I just wanted to make sure what</p> <p>18 you were talking about because you didn't</p> <p>19 give me your roughs, however you do it.</p> <p>20 A. This is the typed up version of</p> <p>21 exactly what I wrote.</p> <p>22 Q. That is fine.</p> <p>23 If you look at the subpoena DT in</p> <p>24 the attached list of documents that we were</p> <p>25 asking for one of the things we requested</p>	<p>1 Wolfson</p> <p>2 Q. Okay.</p> <p>3 A. I have given you every document in</p> <p>4 hard copy.</p> <p>5 MR. KEANE: Yes, Mr. Winton, we</p> <p>6 are not trying to hold back anything.</p> <p>7 We view ourselves as escrow agents only.</p> <p>8 I would be happy to talk to you</p> <p>9 about what is required under the rule.</p> <p>10 MR. WINTON: This whole area of</p> <p>11 ESI is sort of a mine field and I am not</p> <p>12 pitching a fit about this at this point.</p> <p>13 I am not sure there is anything in</p> <p>14 any of these documents where I need to</p> <p>15 see the electronic form but I would ask</p> <p>16 that you make sure that it be preserved</p> <p>17 so that if it becomes necessary then we</p> <p>18 have got it.</p> <p>19 One of the things that I -- that</p> <p>20 we are going to struggle through today</p> <p>21 is reconciling the sequence of</p> <p>22 communications that went back and forth</p> <p>23 particularly between you and London</p> <p>24 because of the time difference and then</p> <p>25 even two e-mails from the same source,</p>
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<p>1 Wolfson</p> <p>2 was electronically stored information under</p> <p>3 the rules.</p> <p>4 Did you not produce any of the</p> <p>5 electronically stored information. In other</p> <p>6 words, the series of e-mails and such that</p> <p>7 you produced are hard copy only.</p> <p>8 Was there a reason you did not</p> <p>9 produce the electronic versions?</p> <p>10 A. Do you want me to prepare a CD ROM</p> <p>11 for you with the same material? My</p> <p>12 understanding of the rules, I could print</p> <p>13 out a hard copy for you or I could put it on</p> <p>14 some sort of electronic format but I really</p> <p>15 don't know what you are referring to as far</p> <p>16 as any sort of noncompliance in that regard.</p> <p>17 I have given you hard copies of</p> <p>18 everything that was stored electronically or</p> <p>19 otherwise. It all --</p> <p>20 Q. I think we are entitled to the</p> <p>21 electronically stored information in its</p> <p>22 native formats so that it comes with --</p> <p>23 A. I don't know what you are</p> <p>24 referring to. If you want to follow up with</p> <p>25 me about that I will be happy to respond.</p>	<p>1 Wolfson</p> <p>2 either you or London will go back and</p> <p>3 forth in the date time convention that</p> <p>4 is used and it makes it sometimes very</p> <p>5 hard to track so that is part of what I</p> <p>6 want to do today.</p> <p>7 Unfortunately that is going to be</p> <p>8 tedious, boring and probably irritating</p> <p>9 to all four of us but I have to sort</p> <p>10 that out.</p> <p>11 So at this point all I am asking</p> <p>12 you to do is make sure that you impose</p> <p>13 whatever document retention is necessary</p> <p>14 to retain that in its electronic form</p> <p>15 unmodified, unedited, whatever.</p> <p>16 MR. KEANE: It seemed odd at first</p> <p>17 partly electronic but I can see the</p> <p>18 distinction.</p> <p>19 BY MR. WINTON:</p> <p>20 Q. So, anyway, I am good with what</p> <p>21 you have done for now and with a</p> <p>22 representation that you will hold on to that</p> <p>23 stuff in its native format. We need not</p> <p>24 spend anymore time on that.</p> <p>25 One of the -- request one, the</p>

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<p>1 Wolfson</p> <p>2 first entity that I was asking for</p> <p>3 communications about is Milestone Shipping</p> <p>4 S.A., the plaintiff in this matter.</p> <p>5 In terms of your dealings with</p> <p>6 Milestone in this matter and I understand</p> <p>7 you said you are not aware of any other</p> <p>8 dealings between -- you have no personal</p> <p>9 knowledge of any other dealings between</p> <p>10 Mahoney & Keane and Milestone. That is</p> <p>11 fine.</p> <p>12 In your dealings with Milestone</p> <p>13 who, in fact, did you deal with?</p> <p>14 A. The truth of the matter is I dealt</p> <p>15 with Mr. Seward. The only time I dealt with</p> <p>16 Milestone is when he told me to forward</p> <p>17 documents on to the various parties.</p> <p>18 As I recall he asked me once or</p> <p>19 twice to forward a document for circulation</p> <p>20 and I believe if I am not mistaken that</p> <p>21 Milestone was included in that e-mail</p> <p>22 reference. But I never communicated</p> <p>23 directly with Milestone. It was always</p> <p>24 through Mark Seward.</p> <p>25 Q. When you were forwarding to</p>	<p>1 Wolfson</p> <p>2 Mr. Seward's instructions to forward the</p> <p>3 document for circulation. I think it was</p> <p>4 the escrow agreement or whatever so everyone</p> <p>5 could sign it.</p> <p>6 Q. Did you have any direct dealings</p> <p>7 with Dan Slane?</p> <p>8 A. No.</p> <p>9 Q. The Slane company?</p> <p>10 A. No. Again I think I may have</p> <p>11 circulated the agreement to an e-mail</p> <p>12 address to be executed or whatever. I never</p> <p>13 spoke to Mr. Slane.</p> <p>14 Q. Estech Trading, same sort of deal,</p> <p>15 you may have forwarded documents to an</p> <p>16 e-mail address you understood to be Estech?</p> <p>17 A. Yes.</p> <p>18 Q. But you had no communications</p> <p>19 directly with Estech in the form of oral</p> <p>20 communication or something other than just</p> <p>21 an e-mail?</p> <p>22 A. Not that I recall.</p> <p>23 Q. American Energy Services, same</p> <p>24 thing with the exception that you did in</p> <p>25 fact talk on the phone to Tom Moloney?</p>
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<p>1 Wolfson</p> <p>2 Milestone who was it that you were</p> <p>3 forwarding to? Was it in fact Milestone?</p> <p>4 Because there is a shipping agent,</p> <p>5 apparently Chaika agencies, here, is that</p> <p>6 who you are --</p> <p>7 A. It would be in the e-mail which is</p> <p>8 basically the information I had.</p> <p>9 Q. We will come to it.</p> <p>10 A. I know there was somebody named</p> <p>11 Yuri that was mentioned at some point.</p> <p>12 Other than that it is just an e-mail address</p> <p>13 that I had from -- that was supplied to me</p> <p>14 from Mark Seward.</p> <p>15 Q. So your communications are your</p> <p>16 back and forth are entirely with Mr. Seward</p> <p>17 who is the London solicitor with More Fisher</p> <p>18 Brown?</p> <p>19 A. Yes.</p> <p>20 Q. And on a couple of occasions as</p> <p>21 you recall you sent an e-mail forwarding</p> <p>22 some documents to an e-mail address you</p> <p>23 understood to be a point of contact</p> <p>24 Mr. Milestone, fair statement?</p> <p>25 A. Sure. On those occasions at</p>	<p>1 Wolfson</p> <p>2 A. Yes, I spoke to Mr. Moloney.</p> <p>3 Aside from that, no.</p> <p>4 Q. Jan or Jan Michalek?</p> <p>5 A. That doesn't ring a bell with me.</p> <p>6 You are testing my recollection.</p> <p>7 I don't remember ever speaking to somebody</p> <p>8 by that name but if you have a document that</p> <p>9 you can refer me to maybe --</p> <p>10 Q. We will see it as we go through</p> <p>11 it.</p> <p>12 How about Johan Schild?</p> <p>13 A. I don't know. Again he might be</p> <p>14 somebody just on an e-mail list but I never</p> <p>15 spoke to anyone by that name that I can</p> <p>16 recall. Nor do I know who he is off the top</p> <p>17 of my head.</p> <p>18 Q. Okay. Another name I see floating</p> <p>19 around in the documents is Mikhail</p> <p>20 Gerasimov?</p> <p>21 A. Now again I can make assumptions</p> <p>22 about who he might be but I don't know.</p> <p>23 Q. Demitrus, same thing?</p> <p>24 A. Same thing.</p> <p>25 Q. There were discussions about</p>

<p style="text-align: right;">Page 29</p> <p>1 Wolfson</p> <p>2 Milestone as owner of the vessel that at one</p> <p>3 point RODON, at another time SANTA BARBARA.</p> <p>4 Do you have any understanding of what the</p> <p>5 actual relationship between Milestone and</p> <p>6 either of the two vessels is?</p> <p>7 A. Well, as you know --</p> <p>8 Q. Actual personal knowledge.</p> <p>9 A. As you know being a maritime</p> <p>10 attorney yourself the term owner and</p> <p>11 charterer is often bandied about with a</p> <p>12 little less than absolute precision.</p> <p>13 You can be a disponent owner, you</p> <p>14 can be a registered owner, you can be a head</p> <p>15 owner and a owner vis-a-vis one charterer</p> <p>16 may be a charterer vis-a-vis another party.</p> <p>17 As a general matter we may be</p> <p>18 dealing with agents and brokers and we just</p> <p>19 refer to owners' interests as owners and</p> <p>20 charterers' interests as charterers.</p> <p>21 So the answer is, no, I don't know</p> <p>22 but I would refer to them as owners since</p> <p>23 they were the -- they were representing the</p> <p>24 interests of the owners of the charter</p> <p>25 party.</p>	<p style="text-align: right;">Page 31</p> <p>1 Wolfson</p> <p>2 have no personal knowledge but anyway.</p> <p>3 Take a look at our list of</p> <p>4 requested documents, item 12.</p> <p>5 MS. OROZCO: From Exhibit 3?</p> <p>6 MR. WINTON: Yes.</p> <p>7 BY MR. WINTON:</p> <p>8 Q. That request is, "Any and all</p> <p>9 writings or recordings that refer, relate or</p> <p>10 pertain to your" meaning Mahoney & Keane,</p> <p>11 "deposit of the \$500,000 transferred to you</p> <p>12 by AES or any transferee reallocation,</p> <p>13 redeposit or the movement or change in</p> <p>14 status of said \$500,000 since your receipt</p> <p>15 thereof on December 3, 2010."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you look personally or</p> <p>19 instruct anyone to look to see whether or</p> <p>20 not there are any documents in the</p> <p>21 possession of Mahoney & Keane that relate to</p> <p>22 the receipt or transfer of that money?</p> <p>23 A. Yes. I did it myself and I found</p> <p>24 correspondence and I produced</p> <p>25 correspondence.</p>
<p style="text-align: right;">Page 30</p> <p>1 Wolfson</p> <p>2 Q. Is the answer to my question, no?</p> <p>3 A. Repeat the question.</p> <p>4 Q. Do you have any personal knowledge</p> <p>5 of the actual relationship between Milestone</p> <p>6 and either the vessel RODON or the vessel</p> <p>7 SANTA BARBARA?</p> <p>8 A. I stand by my answer. I would say</p> <p>9 personal knowledge, no. I was not</p> <p>10 personally involved in negotiating that</p> <p>11 charter party, no.</p> <p>12 Q. This is why deposing lawyers is</p> <p>13 frustrating.</p> <p>14 If you would, just like I am sure</p> <p>15 you have instructed witnesses a thousand</p> <p>16 times, please listen to the question and</p> <p>17 answer the question asked.</p> <p>18 We will get out of here in time to</p> <p>19 make it to the dinner tonight.</p> <p>20 A. And I instruct my witnesses to</p> <p>21 give a full and complete answer.</p> <p>22 Q. Nobody is asking you not to give</p> <p>23 an accurate answer but --</p> <p>24 A. That is what I tried to do, Jim.</p> <p>25 Q. Well, the direct answer was, no, I</p>	<p style="text-align: right;">Page 32</p> <p>1 Wolfson</p> <p>2 It was of some interest to the</p> <p>3 parties that the funds be received quickly</p> <p>4 and I know people were anxious to hear when</p> <p>5 they were received and I produced the</p> <p>6 correspondence to that effect as I recall.</p> <p>7 MR. WINTON: Objection.</p> <p>8 Non-responsive. Beyond, yes, I did look</p> <p>9 and I produced what I found.</p> <p>10 THE WITNESS: I did look and I</p> <p>11 produced what I found.</p> <p>12 BY MR. WINTON:</p> <p>13 Q. If you could just answer the</p> <p>14 question this will go a lot faster.</p> <p>15 Ms. Orozco is here. If she thinks</p> <p>16 that Milestone's position needs to be</p> <p>17 brought out at this point in time I suspect</p> <p>18 she is completely capable of doing so.</p> <p>19 A. I didn't think I was bringing out</p> <p>20 Milestone's position so I would object to</p> <p>21 that characterization.</p> <p>22 I was simply telling you what I</p> <p>23 did.</p> <p>24 Q. Is it your understanding that as a</p> <p>25 fiduciary that you are required to keep, to</p>

<p style="text-align: right;">Page 33</p> <p>1 Wolfson</p> <p>2 create, maintain and keep records relating</p> <p>3 to the receipt and movement of money</p> <p>4 specifically deposit slips and so forth?</p> <p>5 A. I don't know what you mean by</p> <p>6 "fiduciary."</p> <p>7 In my role as -- under that letter</p> <p>8 agreement and in my role as escrow</p> <p>9 agreement -- under the escrow agreement I</p> <p>10 did have those records of when I received</p> <p>11 the funds into our attorney trust account</p> <p>12 and I relayed those advices on.</p> <p>13 I don't know what you are</p> <p>14 referring to.</p> <p>15 Q. Is it your understanding that</p> <p>16 under the terms of the December 2, 2010</p> <p>17 trust agreement that you executed with AES</p> <p>18 that you were by that document and by the</p> <p>19 receipt of the \$500,000 that you on behalf</p> <p>20 of Mahoney & Keane became a fiduciary with</p> <p>21 regard to that money and with regard to AES?</p> <p>22 A. I guess, yes. I was supposed to</p> <p>23 hold it in trust and according to that side</p> <p>24 letter or however you want to characterize</p> <p>25 it and I did. It is still held in trust.</p>	<p style="text-align: right;">Page 35</p> <p>1 Wolfson</p> <p>2 is not fun.</p> <p>3 THE WITNESS: Yes, so was I. I</p> <p>4 counsel my witnesses not to answer legal</p> <p>5 questions. If you want a legal opinion</p> <p>6 I go to the judge. That is my only</p> <p>7 concern.</p> <p>8 MR. WINTON: I don't think I asked</p> <p>9 for a legal opinion. I think I asked</p> <p>10 you, is it your understanding --</p> <p>11 MR. KEANE: Normally I would have</p> <p>12 said something but in this case it is</p> <p>13 stipulated. That is our role.</p> <p>14 THE WITNESS: That is fine.</p> <p>15 BY MR. WINTON:</p> <p>16 Q. And is it your understanding that</p> <p>17 it is your, and I am talking about Mahoney &</p> <p>18 Keane, your obligation to account for and to</p> <p>19 create records that track the receipt into</p> <p>20 the bank account and any movement of that</p> <p>21 money?</p> <p>22 A. I don't know about making records</p> <p>23 but we have records. I don't know, I am not</p> <p>24 saying it was my obligation to maintain</p> <p>25 records like that but it was certainly my</p>
<p style="text-align: right;">Page 34</p> <p>1 Wolfson</p> <p>2 Q. Okay. So is the answer yes, it</p> <p>3 was your understanding that by entering into</p> <p>4 that agreement and receiving that money you</p> <p>5 undertook fiduciary duties to AES?</p> <p>6 A. I undertook all the duties</p> <p>7 outlined in that agreement. You can call it</p> <p>8 trust duties, you can call it escrow duties,</p> <p>9 I did undertake those duties.</p> <p>10 MR. KEANE: I will stipulate that</p> <p>11 we acted as fiduciary.</p> <p>12 THE WITNESS: Absolutely. I don't</p> <p>13 know what you are getting at.</p> <p>14 If you want to ask me, ask about a</p> <p>15 legal question, I --</p> <p>16 MR. KEANE: He is just defining</p> <p>17 our relationship. We were escrow</p> <p>18 agents, fiduciaries and that is</p> <p>19 stipulated.</p> <p>20 MR. WINTON: Follow his lead. He</p> <p>21 responds directly to the questions.</p> <p>22 MR. KEANE: I have been deposed</p> <p>23 ten days. It is unfamiliar turf.</p> <p>24 MR. WINTON: I know. As I said I</p> <p>25 got deposed for four days myself and it</p>	<p style="text-align: right;">Page 36</p> <p>1 Wolfson</p> <p>2 obligation to maintain that money and I did</p> <p>3 and in fact I have all the documents</p> <p>4 relating to it. Nothing is deleted.</p> <p>5 If the money was going to be moved</p> <p>6 anywhere there would be a record of it and</p> <p>7 it would not be deleted.</p> <p>8 Q. You did not produce a deposit slip</p> <p>9 that relates to the \$500,000, correct?</p> <p>10 A. The \$500,000 was wired. I don't</p> <p>11 believe we necessarily get a deposit slip.</p> <p>12 It is often done just by the phone.</p> <p>13 Q. You would get a confirmation from</p> <p>14 your bank by --</p> <p>15 A. That's right.</p> <p>16 Q. -- by wire saying this money was</p> <p>17 received into XYZ account?</p> <p>18 A. That's right. As I recall in this</p> <p>19 particular instance everyone was waiting for</p> <p>20 the funds so it was in fact done by</p> <p>21 telephone.</p> <p>22 MR. KEANE: If we had not produced</p> <p>23 banking records and you want any --</p> <p>24 MR. WINTON: Yes.</p> <p>25 MR. KEANE: -- I will be happy to</p>

<p style="text-align: right;">Page 37</p> <p>1 Wolfson</p> <p>2 get them. Maybe I can get them while</p> <p>3 you are here.</p> <p>4 MR. WINTON: If you could. None</p> <p>5 of us want to come back and resume this</p> <p>6 deposition.</p> <p>7 MR. KEANE: Let me see.</p> <p>8 MR. WINTON: Because what I was</p> <p>9 asking for with this request is any</p> <p>10 deposit slip, any record from the bank</p> <p>11 indicating receipt of the money.</p> <p>12 MR. KEANE: I have you now. That</p> <p>13 may have gone over my head.</p> <p>14 MR. WINTON: Let me finish.</p> <p>15 Any record from the bank of any</p> <p>16 movement of the money to a different</p> <p>17 account.</p> <p>18 Any internal record bookkeeping</p> <p>19 entry that said this money which was</p> <p>20 received in trust under the December 2</p> <p>21 trust agreement has now been moved over</p> <p>22 to the December 2 escrow agreement.</p> <p>23 So any kind of internal</p> <p>24 bookkeeping entry. That is what I was</p> <p>25 after.</p>	<p style="text-align: right;">Page 39</p> <p>1 Wolfson</p> <p>2 Q. I really trip up when we get to</p> <p>3 Mahoney and Moloney.</p> <p>4 MR. WINTON: Off the record.</p> <p>5 (Recess)</p> <p>6 BY MR. WINTON:</p> <p>7 Q. Back on the record.</p> <p>8 Ms. Orozco pointed out as we were</p> <p>9 off the record and I should have noted it</p> <p>10 that the documents that were sent to me by</p> <p>11 Mahoney & Keane I have added Bates numbers</p> <p>12 to so that as they came from Mahoney & Keane</p> <p>13 they were not Bates labeled and I go crazy</p> <p>14 when I try to deal with that so I went ahead</p> <p>15 and added M and K with a number.</p> <p>16 A. That is fine. As I pointed out</p> <p>17 off the record there is a great deal of</p> <p>18 duplication. There are string e-mails.</p> <p>19 I did my best not to mess with the</p> <p>20 way they were bound and that is how I</p> <p>21 produced them and I certainly have no</p> <p>22 problem with you Bates stamping them.</p> <p>23 Q. I appreciate that.</p> <p>24 So back on task here, I was asking</p> <p>25 questions about the money and you said that</p>
<p style="text-align: right;">Page 38</p> <p>1 Wolfson</p> <p>2 MR. KEANE: I take your point.</p> <p>3 THE WITNESS: We will get you</p> <p>4 those bank documents to the extent we</p> <p>5 have any but I can tell you that</p> <p>6 unequivocally the funds never moved.</p> <p>7 The escrow account and the trust</p> <p>8 account were the same account.</p> <p>9 MR. WINTON: I understand, you</p> <p>10 call it an IOLA.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. WINTON:</p> <p>13 Q. We call it an IOLTA but it is the</p> <p>14 same thing. It is a non-interest bearing</p> <p>15 account that law firms have basically for</p> <p>16 short-term money and the interest instead of</p> <p>17 having to be accounted for, it ends up going</p> <p>18 for indigent legal services.</p> <p>19 A. That is correct.</p> <p>20 Q. Okay. Same system.</p> <p>21 A. Yes.</p> <p>22 Q. Do you want to wait until</p> <p>23 Mr. Mahoney gets back -- Mr. Keane, sorry.</p> <p>24 But I don't know them. Mr. Keane.</p> <p>25 A. That is okay.</p>	<p style="text-align: right;">Page 40</p> <p>1 Wolfson</p> <p>2 it has never been moved out of the IOLA</p> <p>3 account, is that how you guys pronounce it?</p> <p>4 MR. KEANE: IOLA.</p> <p>5 THE WITNESS: IOLA.</p> <p>6 MR. KEANE: Can I interrupt?</p> <p>7 MR. WINTON: Off the record.</p> <p>8 (Discussion off the record)</p> <p>9 MR. WINTON: Number 5.</p> <p>10 (Banking records that relate to</p> <p>11 receipt and holding of \$500,000 received</p> <p>12 from AES was marked Exhibit 5 for</p> <p>13 identification)</p> <p>14 BY MR. WINTON:</p> <p>15 Q. Back on the record.</p> <p>16 Mr. Wolfson, Mr. Keane has</p> <p>17 produced what we have marked as Exhibit 5</p> <p>18 which as I understand it are the firm's</p> <p>19 banking records that relate to the receipt</p> <p>20 and holding of the \$500,000 received from</p> <p>21 AES under the trust agreement letter of</p> <p>22 December 2, 2010.</p> <p>23 Is that your understanding?</p> <p>24 A. Yes. That is my understanding. I</p> <p>25 haven't seen the document before but that is</p>

<p style="text-align: right;">Page 41</p> <p>1 Wolfson</p> <p>2 my understanding.</p> <p>3 MR. KEANE: I should probably add</p> <p>4 we no doubt I didn't ask but I am sure</p> <p>5 we have monthly statements with the same</p> <p>6 information repeated over and over</p> <p>7 again.</p> <p>8 BY MR. WINTON:</p> <p>9 Q. If you want to stipulate on behalf</p> <p>10 of the firm that the money has never been</p> <p>11 moved out of that IOLA account that is fine.</p> <p>12 A. The money has never been moved nor</p> <p>13 would we ever have any sort of indication as</p> <p>14 to whether it was held under one agreement</p> <p>15 or another agreement. It would just be in</p> <p>16 the IOLA.</p> <p>17 Q. Okay. Well, let me ask this --</p> <p>18 MR. KEANE: It stayed where it has</p> <p>19 been.</p> <p>20 MR. WINTON: I wasn't questioning</p> <p>21 that that was the case.</p> <p>22 BY MR. WINTON:</p> <p>23 Q. But you then got to my next</p> <p>24 question which was obviously the fight in</p> <p>25 this lawsuit is whether that money is</p>	<p style="text-align: right;">Page 43</p> <p>1 Wolfson</p> <p>2 trust, is that a fair statement?</p> <p>3 A. We never sent anything to AES like</p> <p>4 that.</p> <p>5 Q. And correspondingly you never sent</p> <p>6 anything to Milestone saying this money is</p> <p>7 now under the jurisdiction of the escrow</p> <p>8 agreement?</p> <p>9 A. No. I didn't. It wouldn't be for</p> <p>10 me to say. I didn't. I didn't say anything</p> <p>11 about it at all.</p> <p>12 There -- after this money was</p> <p>13 received there was largely silence until a</p> <p>14 breach occurred around Christmas.</p> <p>15 Q. The breach you are referring to?</p> <p>16 A. The charter party.</p> <p>17 Q. The charter party, the alleged</p> <p>18 breach of the charter party between</p> <p>19 Milestone and Estech?</p> <p>20 A. Yes.</p> <p>21 Q. Has Mahoney & Keane ever rendered</p> <p>22 any accounts to AES or Milestone regarding</p> <p>23 the money, sent them any notices and I guess</p> <p>24 what you said is no?</p> <p>25 A. I believe there was interest when</p>
<p style="text-align: right;">Page 42</p> <p>1 Wolfson</p> <p>2 subject to the trust agreement, the terms of</p> <p>3 the trust agreement or is subject to the</p> <p>4 escrow agreement?</p> <p>5 A. Yes, I get it.</p> <p>6 Q. That is good because if you didn't</p> <p>7 it was going to be a really long day.</p> <p>8 So the question is whether or not</p> <p>9 there are any bookkeeping entries made by</p> <p>10 Mahoney & Keane that would indicate that</p> <p>11 that money had been -- come out from under</p> <p>12 the jurisdiction of the trust agreement</p> <p>13 letter and come under the jurisdiction of</p> <p>14 the escrow agreement?</p> <p>15 A. There would be no indication one</p> <p>16 way or another.</p> <p>17 Q. And based on the documents I have</p> <p>18 seen there has never been a letter, e-mail,</p> <p>19 communication of any sort from Mahoney &</p> <p>20 Keane to AES saying that the money is</p> <p>21 jurisdictionally effectively moving from the</p> <p>22 trust agreement to the escrow agreement</p> <p>23 because some conditions precedent that</p> <p>24 Milestone believe existed had been met and</p> <p>25 therefore money is now in escrow rather than</p>	<p style="text-align: right;">Page 44</p> <p>1 Wolfson</p> <p>2 we received it. I confirmed when we</p> <p>3 received it and after that point there was</p> <p>4 no communication with AES at all until</p> <p>5 Mr. Moloney demanded the return of the funds</p> <p>6 I guess around Christmastime, I forget the</p> <p>7 exact date. It is in the e-mail.</p> <p>8 Q. So I take it you did not consider</p> <p>9 when that money supposedly came out from</p> <p>10 under the jurisdiction of the trust</p> <p>11 agreement and fell under the jurisdiction of</p> <p>12 the escrow agreement that effectively that</p> <p>13 is a disbursement of AES trust funds over to</p> <p>14 Milestone trust funds?</p> <p>15 A. I thought there were these two</p> <p>16 agreements that were signed. I signed both</p> <p>17 of them with the consent and approval of</p> <p>18 both Milestone and AES, and Estech was</p> <p>19 involved in it as well, and whatever</p> <p>20 happened to those funds was governed by</p> <p>21 those agreements.</p> <p>22 Q. You say you signed the escrow</p> <p>23 agreement with the approval of AES --</p> <p>24 A. Well, AES was aware of the escrow</p> <p>25 agreement and the letter agreement</p>

<p style="text-align: right;">Page 45</p> <p>1 Wolfson</p> <p>2 referenced the escrow agreement and</p> <p>3 specifically referenced the escrow agreement</p> <p>4 substantively so I am pretty sure AES was</p> <p>5 aware of that escrow agreement.</p> <p>6 Q. It specifically referenced that</p> <p>7 there were documents that were being</p> <p>8 discussed, correct? We can get to that. We</p> <p>9 don't need to argue about that. We can look</p> <p>10 at it and see exactly what it says.</p> <p>11 A. AES can testify as to whether they</p> <p>12 saw that escrow agreement and if so, when</p> <p>13 and in what form.</p> <p>14 Q. And whether or not they ever saw a</p> <p>15 final agreement?</p> <p>16 A. Right.</p> <p>17 My understanding certainly was</p> <p>18 that AES was aware of the escrow agreement</p> <p>19 since it was specifically referenced in the</p> <p>20 letter.</p> <p>21 Q. I will object as non-responsive</p> <p>22 your answer to my question.</p> <p>23 Let me ask the question again.</p> <p>24 Was it your understanding that</p> <p>25 when that money, as a fiduciary, when that</p>	<p style="text-align: right;">Page 47</p> <p>1 Wolfson</p> <p>2 actual agreement in front of us.</p> <p>3 Q. We will get to the subject. It is</p> <p>4 not a side letter. We have a trust</p> <p>5 agreement.</p> <p>6 I would object to the designation</p> <p>7 of it as a side letter which is something</p> <p>8 that AES has never called that.</p> <p>9 A. You can call it a Diet Coke for</p> <p>10 all I care.</p> <p>11 The agreement speaks for itself</p> <p>12 and my understanding of that agreement was</p> <p>13 that AES had an absolute right to return</p> <p>14 that money at any time prior to the</p> <p>15 finalization of the escrow agreement.</p> <p>16 And that the whole purpose of this</p> <p>17 because it wasn't clear to me at first was</p> <p>18 that there be simultaneity to that. Before</p> <p>19 Milestone or whoever the owner may be</p> <p>20 chartered this vessel and undertook these</p> <p>21 burdens and obligations with respect to</p> <p>22 carrying this cargo that there be a</p> <p>23 mechanism by which security would</p> <p>24 immediately be in place.</p> <p>25 And AES, I understood, wanted</p>
<p style="text-align: right;">Page 46</p> <p>1 Wolfson</p> <p>2 money came out from under the terms of the</p> <p>3 trust agreement letter that you signed with</p> <p>4 AES and came under the jurisdiction of the</p> <p>5 escrow agreement that you signed with Estech</p> <p>6 and Milestone that that is effectively a</p> <p>7 disbursement of AES money to the escrow</p> <p>8 agreement that was a separate agreement with</p> <p>9 separate parties?</p> <p>10 A. I don't know what you mean by</p> <p>11 "disbursement."</p> <p>12 The way I understood the</p> <p>13 transaction is that when the escrow</p> <p>14 agreement was finalized, when the charter</p> <p>15 party was finalized that these funds would</p> <p>16 become the escrow funds.</p> <p>17 Now I understand -- you are</p> <p>18 forcing me to take sides by asking my</p> <p>19 opinion on the matter. I was with --</p> <p>20 Q. No. I am not asking your opinion.</p> <p>21 I asked your understanding.</p> <p>22 A. All right. My understanding.</p> <p>23 My understanding was that this is</p> <p>24 what the parties agreed to that -- where is</p> <p>25 the side letter? It helps if we have the</p>	<p style="text-align: right;">Page 48</p> <p>1 Wolfson</p> <p>2 similarly a mechanism through which it could</p> <p>3 get the money returned to the extent that</p> <p>4 the charter party was not fixed and an</p> <p>5 escrow agreement was not reached.</p> <p>6 That was my understanding and</p> <p>7 sorry if it is not your understanding but</p> <p>8 that was my understanding.</p> <p>9 Q. I would say that is absolutely</p> <p>10 correct. That is not my understanding.</p> <p>11 That is certainly not AES's understanding.</p> <p>12 What do you base that</p> <p>13 understanding on that you just laid out for</p> <p>14 us?</p> <p>15 A. The letter.</p> <p>16 Q. Which letter? Just tell me which</p> <p>17 letter?</p> <p>18 A. The trust agreement, side letter,</p> <p>19 whatever you want to call it.</p> <p>20 Q. All right. We will get to that.</p> <p>21 A. Okay.</p> <p>22 Q. So even with that your stated</p> <p>23 perspective on what the deal was here?</p> <p>24 A. It wasn't my deal.</p> <p>25 Q. I understand that. You said what</p>

<p style="text-align: right;">Page 49</p> <p>1 Wolfson</p> <p>2 your understanding was.</p> <p>3 A. Yes.</p> <p>4 Q. I am accepting that is what your</p> <p>5 understanding is.</p> <p>6 A. Yes.</p> <p>7 Q. When did you achieve that</p> <p>8 understanding?</p> <p>9 A. Well, when, after Mr. Moloney</p> <p>10 called me and said -- this was all</p> <p>11 completely out of the blue. I didn't know</p> <p>12 who he was. I --</p> <p>13 Q. The question was when?</p> <p>14 A. I am telling you.</p> <p>15 It was when Mr. Moloney -- after</p> <p>16 Mr. Moloney called me and when I wrote to</p> <p>17 Mark Seward saying what is this about, that</p> <p>18 he described it to me and right about</p> <p>19 practically the same time I got the side</p> <p>20 letter and saw the language in the side</p> <p>21 letter and at that time I understood what</p> <p>22 the transaction was about because it made no</p> <p>23 sense to me before.</p> <p>24 Q. So your statement is that you</p> <p>25 reached this understanding upon receipt of</p>	<p style="text-align: right;">Page 51</p> <p>1 Wolfson</p> <p>2 letter as a side agreement?</p> <p>3 MR. KEANE: Let's agree --</p> <p>4 THE WITNESS: You are hung up on</p> <p>5 semantics.</p> <p>6 I don't care what you call it --</p> <p>7 MS. OROZCO: Can we mark the</p> <p>8 document and that way refer to it as an</p> <p>9 exhibit because I think that would be</p> <p>10 much better? That would be my</p> <p>11 suggestion but --</p> <p>12 MR. KEANE: Or we can come up with</p> <p>13 any term.</p> <p>14 THE WITNESS: Do you want me to</p> <p>15 call it a trust agreement, I will call</p> <p>16 it a trust agreement.</p> <p>17 MR. WINTON: That is what I have</p> <p>18 been calling it.</p> <p>19 THE WITNESS: I will try to.</p> <p>20 I had a conversation with</p> <p>21 Mr. Moloney. He called me out of the</p> <p>22 blue. I didn't know who he was. He</p> <p>23 introduced himself. He said, "I am the</p> <p>24 counsel for the party that will be</p> <p>25 putting in the \$500,000."</p>
<p style="text-align: right;">Page 50</p> <p>1 Wolfson</p> <p>2 the trust agreement from Mr. Moloney?</p> <p>3 A. Yes. That in combination with the</p> <p>4 advices from Mark Seward.</p> <p>5 Q. Did you ever discuss that</p> <p>6 understanding with Mr. Moloney to make sure</p> <p>7 that you and he were on the same page?</p> <p>8 A. Mr. Moloney -- my conversation</p> <p>9 with Mr. Moloney was before that so I don't</p> <p>10 believe that this was ever explicitly</p> <p>11 discussed so I don't recall saying --</p> <p>12 speaking about that with Mr. Moloney at all.</p> <p>13 Q. So you obtained your understanding</p> <p>14 from discussions with Mr. Seward and your</p> <p>15 interpretation of the trust letter?</p> <p>16 A. And there is also a prior</p> <p>17 conversation with Mr. Moloney but it</p> <p>18 wasn't -- it hadn't crystalized by then</p> <p>19 because my understanding -- I got a call</p> <p>20 from somebody, I don't know who he is and</p> <p>21 says we are the people putting the \$500,000</p> <p>22 in but we need a side letter from you making</p> <p>23 sure we can get the money back.</p> <p>24 Q. I thought we agreed that</p> <p>25 Mr. Moloney has never referred to the trust</p>	<p style="text-align: right;">Page 52</p> <p>1 Wolfson</p> <p>2 I believe in my e-mail to</p> <p>3 Mr. Seward I called him charterer's</p> <p>4 counsel. I understand now that may be</p> <p>5 incorrect that he was actually with AES</p> <p>6 and not technically the charterer.</p> <p>7 He says, we need your confirmation</p> <p>8 that we can get this money back, you</p> <p>9 know if the security does not come in or</p> <p>10 if -- he didn't really say if. He said,</p> <p>11 I need some assurance that I can get the</p> <p>12 money back upon my demand.</p> <p>13 And so then I didn't understand</p> <p>14 what he was talking about because we</p> <p>15 have an escrow agreement and the whole</p> <p>16 point of the escrow agreement is to have</p> <p>17 the security.</p> <p>18 So then I wrote to Mark and I said</p> <p>19 I got a call from some guy saying, you</p> <p>20 know, he needs our confirmation that he</p> <p>21 can get the money back at any time upon</p> <p>22 his demand. Is this true?</p> <p>23 And Mark wrote back and said,</p> <p>24 well, you can confirm for him that he</p> <p>25 can get it back at any time prior to I</p>

<p style="text-align: right;">Page 53</p> <p>1 Wolfson</p> <p>2 think he said the escrow agreement</p> <p>3 coming into place.</p> <p>4 And then I understood that what</p> <p>5 Mr. Moloney was referring to, which he</p> <p>6 didn't articulate very well and</p> <p>7 certainly did not clearly to me was just</p> <p>8 for that interim period before the</p> <p>9 finalization of the escrow agreement he</p> <p>10 wanted an assurance that should the deal</p> <p>11 fall apart that they get their money</p> <p>12 back. Just like Mr. Seward wanted</p> <p>13 assurance that should the deal go</p> <p>14 through that money would be in place.</p> <p>15 Practically simultaneously I</p> <p>16 received from Mr. Moloney a proposed</p> <p>17 draft letter from -- letter from us,</p> <p>18 agreement from us and I looked at the</p> <p>19 language of that letter and there was</p> <p>20 particular language in there saying that</p> <p>21 they had basically an absolute right to</p> <p>22 return of those funds at any time prior</p> <p>23 to the reaching of the escrow agreement.</p> <p>24 I thought that that contingency</p> <p>25 that it applied only to prior reaching</p>	<p style="text-align: right;">Page 55</p> <p>1 Wolfson</p> <p>2 brain and there was no other way this deal</p> <p>3 made any sense to me because it made no</p> <p>4 sense, the interpretation which I heard for</p> <p>5 the first time only around Christmastime</p> <p>6 from Mr. Moloney that what we actually</p> <p>7 agreed to was they could get their money</p> <p>8 back at any time made no sense to me because</p> <p>9 why did he send me money to be held in</p> <p>10 escrow or to be held in trust for no reason</p> <p>11 other than that he can demand it back at any</p> <p>12 time making no interest. It made no sense.</p> <p>13 And so I kept asking Mr. Moloney</p> <p>14 for an explanation before I reached any</p> <p>15 decision on who should get the funds and I</p> <p>16 never got a good answer as to why he did</p> <p>17 this under his explanation.</p> <p>18 The only explanation that made</p> <p>19 commercial sense to me was that -- was what</p> <p>20 Milestone was suggesting. I am sorry. That</p> <p>21 is my opinion.</p> <p>22 MR. WINTON: Objection.</p> <p>23 Non-responsive.</p> <p>24 BY MR. WINTON:</p> <p>25 Q. You received -- you had</p>
<p style="text-align: right;">Page 54</p> <p>1 Wolfson</p> <p>2 the escrow agreement was the product of</p> <p>3 a negotiation between AES and Estech and</p> <p>4 Mark Seward and Milestone which I was</p> <p>5 not privy to.</p> <p>6 When Mr. Moloney called he</p> <p>7 obviously had discussions with other</p> <p>8 people, not me, and it had been a fait</p> <p>9 accompli. He advised me about this and</p> <p>10 so I advised Mark Seward, is this true.</p> <p>11 Then I see the agreements. This</p> <p>12 is what they are talking about. I sent</p> <p>13 it on to Mark Seward. I said, is this,</p> <p>14 okay, is this what you want me to sign.</p> <p>15 He said, yes, and I did it.</p> <p>16 MR. WINTON: Objection.</p> <p>17 Non-responsive.</p> <p>18 BY MR. WINTON:</p> <p>19 Q. So you based the understanding</p> <p>20 that you have articulated on the initial</p> <p>21 call from Mr. Moloney, an exchange you had</p> <p>22 with Mr. Seward and your interpretation of</p> <p>23 the trust agreement sent to you by</p> <p>24 Mr. Moloney. Is that a fair statement?</p> <p>25 A. Yes. But I also relied on my</p>	<p style="text-align: right;">Page 56</p> <p>1 Wolfson</p> <p>2 Mr. Moloney's initial statement in his</p> <p>3 telephone call. You conveyed that</p> <p>4 information to Mr. Seward, you got</p> <p>5 Mr. Seward's response.</p> <p>6 You received the trust agreement</p> <p>7 letter from Mr. Moloney and you did not at</p> <p>8 any time prior to the December 23 time</p> <p>9 frame, late December, you did not at any</p> <p>10 time go back to Mr. Moloney and ask for</p> <p>11 confirmation that your understanding was</p> <p>12 correct, is that a fair statement?</p> <p>13 A. That is a fair statement. I mean</p> <p>14 I didn't ask him to explain what he meant by</p> <p>15 the terms of the letter agreement.</p> <p>16 For all I know these parties</p> <p>17 negotiated this so that it would be</p> <p>18 intentionally ambiguous. For all I know it</p> <p>19 is not ambiguous. Maybe they are right.</p> <p>20 Maybe you are right.</p> <p>21 My reading of it is, as I said, I</p> <p>22 think there is a condition that it only</p> <p>23 applies to the reaching of the escrow</p> <p>24 agreement. If I am wrong Judge Marrero will</p> <p>25 say so.</p>

<p style="text-align: right;">Page 57</p> <p>1 Wolfson</p> <p>2 Q. So you as a fiduciary to AES made</p> <p>3 your own decision about what the agreement</p> <p>4 was, is that a fair statement?</p> <p>5 A. The agreement was AES's language</p> <p>6 and you are asking me what my understanding</p> <p>7 of the agreement was. That was my</p> <p>8 understanding.</p> <p>9 I can read English just like</p> <p>10 Mr. Moloney can read English and it is not</p> <p>11 uncommon that people have different</p> <p>12 interpretations.</p> <p>13 Q. You were a fiduciary to AES,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. As a fiduciary you have very high</p> <p>17 obligations to the beneficiary of the trust,</p> <p>18 correct?</p> <p>19 A. Yes, I do and I also have</p> <p>20 fiduciary obligations under the escrow</p> <p>21 agreement and there was a dispute as to</p> <p>22 whether this falls under the escrow</p> <p>23 agreement or whether it falls under the</p> <p>24 trust agreement.</p> <p>25 MR. WINTON: Objection.</p>	<p style="text-align: right;">Page 59</p> <p>1 Wolfson</p> <p>2 out --</p> <p>3 A. That's right. And I understood --</p> <p>4 MR. KEANE: Garth, you are</p> <p>5 speaking over him.</p> <p>6 THE WITNESS: It was my</p> <p>7 understanding to carry out the terms of</p> <p>8 the agreement were and I understood the</p> <p>9 agreement --</p> <p>10 MR. KEANE: It is going to take a</p> <p>11 longer amount of time and that's my</p> <p>12 point. You can't cut his question off.</p> <p>13 Let him get his question out and</p> <p>14 just answer.</p> <p>15 BY MR. WINTON:</p> <p>16 Q. So what you did was you made your</p> <p>17 own decision about what the agreement was</p> <p>18 without at any time confirming with</p> <p>19 Mr. Moloney that your understanding was</p> <p>20 correct?</p> <p>21 MR. KEANE: Objection. I don't</p> <p>22 think that fairly recapitulates his</p> <p>23 testimony to be honest.</p> <p>24 I think you asked him a question</p> <p>25 subsequent to those events as to what he</p>
<p style="text-align: right;">Page 58</p> <p>1 Wolfson</p> <p>2 Non-responsive.</p> <p>3 BY MR. WINTON:</p> <p>4 Q. Please answer my questions.</p> <p>5 You are here as a combatant for</p> <p>6 Milestone and that is not your role.</p> <p>7 MS. OROZCO: Objection.</p> <p>8 THE WITNESS: Don't ask my</p> <p>9 understanding if you don't want it.</p> <p>10 BY MR. WINTON:</p> <p>11 Q. I didn't. I asked you -- this</p> <p>12 question was what you did. Okay?</p> <p>13 A. Okay.</p> <p>14 Q. And would you agree with me that</p> <p>15 you were a fiduciary with obligations to AES</p> <p>16 and what you did rather than calling</p> <p>17 Mr. Moloney and making certain that as a</p> <p>18 fiduciary to AES you and AES were on the</p> <p>19 same page as to what the agreement was, you</p> <p>20 made your own decision about what made sense</p> <p>21 and what was right and wrong?</p> <p>22 A. That was not my duty as a</p> <p>23 fiduciary to Mr. Moloney to help him draft</p> <p>24 his own agreement.</p> <p>25 Q. It is your obligation to carry</p>	<p style="text-align: right;">Page 60</p> <p>1 Wolfson</p> <p>2 thought about the construct of that</p> <p>3 agreement and I think your question is</p> <p>4 in a different time frame.</p> <p>5 MR. WINTON: I don't think so.</p> <p>6 I think my question or the problem</p> <p>7 is he is not answering my questions and</p> <p>8 so he goes off on a tangent and it is</p> <p>9 hard to figure out where the question is</p> <p>10 originally going.</p> <p>11 MR. KEANE: Maybe if we got</p> <p>12 clarified. My view of his answer so far</p> <p>13 is that --</p> <p>14 MR. WINTON: Wait.</p> <p>15 MR. KEANE: Okay. My objection is</p> <p>16 there is a time frame shift going on</p> <p>17 here.</p> <p>18 MR. WINTON: Feel free to make</p> <p>19 your objections.</p> <p>20 THE WITNESS: If you give me a</p> <p>21 sentence that says Spot is a dog and I</p> <p>22 read that as Spot is a dog I don't</p> <p>23 necessarily need to go back to the</p> <p>24 person who gave it to me and say are you</p> <p>25 sure Spot is a dog and not a cat.</p>

<p style="text-align: right;">Page 61</p> <p>1 Wolfson</p> <p>2 I had an agreement in front of me.</p> <p>3 It said what it said.</p> <p>4 I had the understanding that I had</p> <p>5 the understanding. I felt no need to go</p> <p>6 back to Mr. Moloney and ask him to</p> <p>7 further clarify his own language. I</p> <p>8 went --</p> <p>9 BY MR. WINTON:</p> <p>10 Q. But you did --</p> <p>11 A. I went to the people I was working</p> <p>12 for under the escrow agreement and I said is</p> <p>13 this okay with them.</p> <p>14 Q. But you did feel it was necessary</p> <p>15 to go to Mr. Seward --</p> <p>16 A. Absolutely.</p> <p>17 Q. -- and ask for his understanding?</p> <p>18 A. Absolutely because the funds -- to</p> <p>19 try to separate the trust agreement from the</p> <p>20 escrow agreement is inaccurate and futile.</p> <p>21 They were linked. They were linked</p> <p>22 expressly.</p> <p>23 MR. WINTON: Objection.</p> <p>24 Non-responsive.</p> <p>25</p>	<p style="text-align: right;">Page 63</p> <p>1 Wolfson</p> <p>2 A. He wasn't signing the escrow</p> <p>3 agreement. I assumed he was aware of the</p> <p>4 escrow agreement.</p> <p>5 Q. Mr. Seward didn't sign the trust</p> <p>6 agreement, right?</p> <p>7 A. But it affected his interest under</p> <p>8 the escrow agreement.</p> <p>9 Q. But you are telling me that the</p> <p>10 escrow agreement affected Mr. Moloney's</p> <p>11 funds.</p> <p>12 A. I understood that he was aware of</p> <p>13 the escrow agreement.</p> <p>14 Q. You understood it but you never</p> <p>15 asked him? That is the simple question.</p> <p>16 A. He referenced in his own letter</p> <p>17 that he gave to me.</p> <p>18 You are pushing fiduciary duty to</p> <p>19 suggest I should have done a lot more.</p> <p>20 Q. I just want you to answer the</p> <p>21 question.</p> <p>22 MR. KEANE: This is a yes or no</p> <p>23 question.</p> <p>24 THE WITNESS: I did not send him,</p> <p>25 as far as I recall, another copy of the</p>
<p style="text-align: right;">Page 62</p> <p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. Please just answer my questions.</p> <p>4 A. I did feel it necessary to go to</p> <p>5 Mr. Seward. I was not going to sign that</p> <p>6 agreement unless all parties were on board.</p> <p>7 Q. "That agreement" being the trust</p> <p>8 agreement?</p> <p>9 A. The trust agreement.</p> <p>10 Q. So you got Mr. Seward's</p> <p>11 understanding of what was going on but you</p> <p>12 did not go back to Mr. Moloney to make sure</p> <p>13 he agreed with what Mr. Seward said?</p> <p>14 MS. OROZCO: Objection.</p> <p>15 THE WITNESS: No. I got a draft</p> <p>16 from one side and I sent it to the other</p> <p>17 side, is this okay. Both parties have</p> <p>18 to approve the draft.</p> <p>19 You are really twisting it. I am</p> <p>20 not trying to be evasive but I am trying</p> <p>21 to answer your question.</p> <p>22 BY MR. WINTON:</p> <p>23 Q. You never sent the escrow</p> <p>24 agreement to Mr. Moloney for his approval,</p> <p>25 did you?</p>	<p style="text-align: right;">Page 64</p> <p>1 Wolfson</p> <p>2 escrow agreement.</p> <p>3 BY MR. WINTON:</p> <p>4 Q. Very simple. You got it.</p> <p>5 A. It was still being negotiated as I</p> <p>6 understood it.</p> <p>7 Q. You got the phone call from</p> <p>8 Mr. Moloney stating his understanding of</p> <p>9 what was going to happen, you sent that in</p> <p>10 an e-mail to Mr. Seward on behalf of</p> <p>11 Milestone.</p> <p>12 A. Yes.</p> <p>13 Q. You got Mr. Seward's position on</p> <p>14 what was supposed to happen.</p> <p>15 You thought that makes sense and</p> <p>16 you -- and he approved your signing the</p> <p>17 letter once you finally got it, the trust</p> <p>18 agreement.</p> <p>19 You executed both agreements but</p> <p>20 you never sent the escrow agreement that you</p> <p>21 signed to Mr. Moloney, correct?</p> <p>22 A. I don't recall ever sending that</p> <p>23 escrow agreement to Mr. Moloney.</p> <p>24 Q. Thank you.</p> <p>25 And you never called Mr. Moloney</p>

<p style="text-align: right;">Page 65</p> <p>1 Wolfson</p> <p>2 and said, Tom, here is my understanding of</p> <p>3 how this whole thing fits together, is that</p> <p>4 what you intend. It never happened, right?</p> <p>5 MR. KEANE: Up to December.</p> <p>6 THE WITNESS: No. Not --</p> <p>7 BY MR. WINTON:</p> <p>8 Q. Late December, I agree --</p> <p>9 A. We have written agreements. I</p> <p>10 never did that.</p> <p>11 Q. Okay. Mr. Keane, you are right.</p> <p>12 I am focusing on December 1, 2. What</p> <p>13 happens down the road once the wheels come</p> <p>14 off this trolley obviously is a totally</p> <p>15 different situation.</p> <p>16 MR. KEANE: I got it.</p> <p>17 MR. WINTON: Mark that as number</p> <p>18 6, please.</p> <p>19 (Three-page string of e-mails was</p> <p>20 marked Exhibit 6 for identification)</p> <p>21 BY MR. WINTON:</p> <p>22 Q. Exhibit 6 is a three-page e-mail</p> <p>23 exchange that you produced. Do you</p> <p>24 recognize it?</p> <p>25 A. Yes. I think it is four pages but</p>	<p style="text-align: right;">Page 67</p> <p>1 Wolfson</p> <p>2 A. Yes, I do.</p> <p>3 Q. Is it your recollection this is</p> <p>4 the very first communication starts this</p> <p>5 whole wonderful sequence of events?</p> <p>6 A. Yes, that is my recollection.</p> <p>7 I should have said no.</p> <p>8 Q. What we see here is that this one</p> <p>9 indicates it was sent December 1, 9:42:52,</p> <p>10 2010?</p> <p>11 A. Yes. As you know as we discussed,</p> <p>12 maybe it was off the record, different</p> <p>13 computers have different clocks going.</p> <p>14 There are different -- it is hard to say</p> <p>15 exactly but that is certainly what the</p> <p>16 e-mail says. It should give you a rough</p> <p>17 idea when it came in.</p> <p>18 Q. I am assuming that -- this one I</p> <p>19 am struggling to figure out whether that is</p> <p>20 London time or New York time.</p> <p>21 A. Yes.</p> <p>22 Q. It could be either.</p> <p>23 A. Well, if you look, I think it</p> <p>24 is --</p> <p>25 Q. That one uses the American</p>
<p style="text-align: right;">Page 66</p> <p>1 Wolfson</p> <p>2 I do recognize it.</p> <p>3 Q. It is -- on page, it says 1 of 3,</p> <p>4 2 of 3 and 3 of 3.</p> <p>5 A. I think there is --</p> <p>6 Q. Oh, I am sorry. I shifted my</p> <p>7 stuff around to be in what I believe to be</p> <p>8 the right order.</p> <p>9 MR. WINTON: Would you make that</p> <p>10 one Exhibit 6 and we will change the</p> <p>11 printout. My apologies.</p> <p>12 Mark this as 7.</p> <p>13 (One page e-mail with attachment</p> <p>14 of an escrow agreement was marked Exhibit 7</p> <p>15 for identification)</p> <p>16 BY MR. WINTON:</p> <p>17 Q. Now, what we have marked as</p> <p>18 Exhibit 6 is a three-page string of e-mails,</p> <p>19 the third page of which is just the bottom</p> <p>20 of the e-mail from Mr. Seward.</p> <p>21 If you look at the second page</p> <p>22 this is from Mark Seward, "Garth, Hi, I need</p> <p>23 a U.S. escrow agent to hold some charter</p> <p>24 security and so forth."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 68</p> <p>1 Wolfson</p> <p>2 convention on the month, day and it uses the</p> <p>3 American convention on hours but that is not</p> <p>4 going to hold true as a way of sorting this</p> <p>5 out as we go through them.</p> <p>6 A. Well, my final response if you see</p> <p>7 when I said okay is 9:48 a.m. on December 1.</p> <p>8 Q. Okay. So this must be 9:42 --</p> <p>9 A. London time.</p> <p>10 Q. Okay.</p> <p>11 A. Really the previous evening.</p> <p>12 Q. Okay. So the very next one above</p> <p>13 that from Mark, and this one is totally</p> <p>14 different in terms of the date time format.</p> <p>15 Apparently one is from the office and the</p> <p>16 other from his home or BlackBerry or some</p> <p>17 such.</p> <p>18 A. That's right.</p> <p>19 Q. Sometimes we will see that he is</p> <p>20 sending stuff that specifically says it is</p> <p>21 from his mobile.</p> <p>22 And here this one says, 1</p> <p>23 December 2010 so that is the European</p> <p>24 convention on dates and 13:23, again</p> <p>25 European, so 13:23 would be 1:23 in the</p>

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1 Wolfson
 2 afternoon, London, minus 5 would be 8:23 in
 3 the morning here?
 4 **A. Yes.**
 5 MR. KEANE: It could be minus 6.
 6 BY MR. WINTON:
 7 Q. I am sorry. It is -- it is minus
 8 5. This is December so we should be off
 9 daylight savings so it should be minus 5 for
 10 New York. I am minus 6. Houston is minus
 11 6.
 12 Okay. So he is coming back saying
 13 I need to do it today. What we will see
 14 throughout all of these exchanges and I
 15 think you have alluded to it before is, this
 16 whole deal, and it may be part of the
 17 problem, was done in a huge rush, would you
 18 agree with that?
 19 **A. I would say there was a lot of**
 20 **time pressure to get it done as quickly as**
 21 **possible.**
 22 Q. Right.
 23 And we see that in the e-mails
 24 coming from Mr. Seward, I need it right now,
 25 I have to have it immediately and so forth.

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1 Wolfson
 2 So did you ever acquire an
 3 understanding of what the rush was to get
 4 this thing done?
 5 **A. I mean I guess I had assumptions.**
 6 Q. Don't -- let's not do assumptions.
 7 **A. I knew that there was a charter**
 8 **and it had to be fixed and vessels generally**
 9 **have locations and schedules and it is not**
 10 **uncommon that you would have time pressure**
 11 **on fixing vessels and firming up chartering**
 12 **arrangements, you know, very quickly.**
 13 **I guess I did assume it was one of**
 14 **those situations which is not uncommon as I**
 15 **said.**
 16 Q. So you didn't draw any conclusions
 17 from it, you just dealt with it?
 18 **A. No. Not unusual.**
 19 Q. The next one as we go up is on the
 20 bottom of the first page and you are going
 21 back to him saying that you are on your way
 22 to court and this is 1:45 so that is
 23 probably London time again, right?
 24 **A. Yes.**
 25 Q. So this should be 8:45 in the

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1 Wolfson
 2 morning here?
 3 **A. Yes.**
 4 Q. 8:45 on December 1. And what he
 5 is asking you at this point is are you
 6 willing to act as an escrow agent?
 7 **A. Right. And I personally had never**
 8 **done it before although I know the office**
 9 **has and so I basically told them, you know,**
 10 **give me some time and all I really want to**
 11 **do is just run it by Ed and I did that and**
 12 **Ed confirmed it wouldn't be a problem and we**
 13 **went ahead and did it.**
 14 Q. So your e-mail at the top going
 15 back to Mr. Seward on December 1 at
 16 9:48 a.m. New York time, you are saying yes,
 17 okay, we will act as an escrow agent?
 18 **A. Yes. By that time I had conferred**
 19 **with my counsel, Mr. Keane, and he confirmed**
 20 **there is no issue with that and we can go**
 21 **ahead and do it.**
 22 MR. KEANE: Bad advice there.
 23 You can continue.
 24 BY MR. WINTON:
 25 Q. These are -- on the top it says

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1 Wolfson
 2 Marie Cush is that a secretary in your
 3 office?
 4 **A. Yes. That is the main -- there is**
 5 **the law office address which gets all the**
 6 **e-mails that come in go to that address so I**
 7 **did searches for documents both on my**
 8 **personal computer and on the computer of all**
 9 **the e-mail that came in the office so I**
 10 **could see everything that was sent to**
 11 **anybody and when I print those out it comes**
 12 **out Marie Cush at the top. She is a former**
 13 **secretary here.**
 14 Q. So when we see Marie Cush we know
 15 it came from your office?
 16 **A. That is right.**
 17 **It was just printed out from a**
 18 **different machine. I wanted to make sure I**
 19 **got every document that came in the office**
 20 **so I went to both.**
 21 Q. Now we have Exhibit 7 which we
 22 previously marked.
 23 **A. Got it.**
 24 Q. This is a one page e-mail with an
 25 attachment of an escrow agreement?

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1 Wolfson
 2 **A. Correct.**
 3 Q. So 9:44, this should be New York
 4 time, correct?
 5 **A. That is my guess, yes.**
 6 Q. And he is forwarding to you the
 7 proposed escrow agreement?
 8 **A. Yes.**
 9 Q. That is what is attached?
 10 **A. Yes. My understanding was it was**
 11 **still in draft and in fact I believe it was**
 12 **changed later so this is just an earlier**
 13 **draft. It is not the final.**
 14 Q. This one is -- has already been
 15 stamped and signed on behalf of Milestone
 16 Shipping, correct?
 17 **A. It looks that way, yes.**
 18 Q. But only Milestone?
 19 **A. Yes.**
 20 Q. Did you have anything to do with
 21 the drafting of the escrow agreement, the
 22 terms at all?
 23 **A. No. I believe at one point the**
 24 **only comment I had throughout was to make**
 25 **sure everyone knew there would be no**

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1 Wolfson
 2 **interest on the account.**
 3 MR. WINTON: Exhibit 8.
 4 (Letter of credit was marked
 5 Exhibit 8 for identification)
 6 BY MR. WINTON:
 7 Q. Have you had a chance to look at
 8 Exhibit 8?
 9 **A. Yes.**
 10 Q. Do you recognize that document?
 11 **A. Yes. I have seen this. This is a**
 12 **letter of credit.**
 13 **I am not sure how it got to us. I**
 14 **did find it and I really can't say, it says**
 15 **it is from Dan Slane to Mark Seward. I**
 16 **don't see where we show up anywhere on it.**
 17 **I am not sure how we got the document.**
 18 Q. That is what I was going to ask
 19 you. How did you get this because I don't
 20 see --
 21 **A. I can only assume it came from**
 22 **Mark Seward but I am not sure how it was**
 23 **e-mailed to us. This is the way it was**
 24 **printed out and there is no -- I think Mark**
 25 **Seward must have just sent it to us,**

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1 Wolfson
 2 **forwarded it.**
 3 **There was a letter of credit and**
 4 **issues with the letter of credit going on as**
 5 **well throughout this, sort of unrelated to**
 6 **our escrow agency.**
 7 Q. Right. That is what I was talking
 8 about with regard to you actually providing
 9 a legal opinion in response to a request
 10 from Mr. Seward related to the assignability
 11 of a portion of a letter of credit.
 12 **A. Yes. There was one question he**
 13 **had, he was just wondering whether you could**
 14 **have multiple assignments on a letter of**
 15 **credit and I knew the answer and just gave**
 16 **it to him the same way I would give it to**
 17 **anybody who asked me off the cuff.**
 18 **I would not say it was setting up**
 19 **a new attorney-client relationship.**
 20 Q. You in fact charged him for that
 21 time, right?
 22 **A. Yes.**
 23 Q. Correct?
 24 **A. Yes.**
 25 Q. At your hourly billable rate?

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1 Wolfson
 2 **A. That was the same rate I was**
 3 **billing for the escrow agreement, escrow**
 4 **agency.**
 5 Q. So that was a yes?
 6 **A. Yes.**
 7 MR. WINTON: Number 9.
 8 (One page e-mail dated 12:08 p.m.
 9 December 1 was marked Exhibit 9 for
 10 identification)
 11 BY MR. WINTON:
 12 Q. This is another one page e-mail,
 13 this one dated 12:08 p.m. December 1 so
 14 again this is from Slane to Seward with no
 15 indication of how you got it?
 16 **A. That's right.**
 17 Q. But --
 18 **A. It came from Mark Seward. He gave**
 19 **me this stuff. I don't know why it is not**
 20 **showing on the e-mail. This came from Mark**
 21 **Seward.**
 22 **And now I know who you mean by Jan**
 23 **Michalek.**
 24 Q. Do you have a recollection of why
 25 Mr. Seward sent this document to you or

<p style="text-align: right;">Page 77</p> <p>1 Wolfson</p> <p>2 when?</p> <p>3 A. He had suspicions about -- he must</p> <p>4 be psychic but he had suspicions about the</p> <p>5 trustworthiness of Mr. Slane and his people</p> <p>6 and he wanted -- at one point, you know, he</p> <p>7 asked because he is in London and I am in</p> <p>8 New York so this is a real bank even and I</p> <p>9 basically did a Google search and said it</p> <p>10 looked like a real bank to me. And that's</p> <p>11 it. So he gave me this stuff.</p> <p>12 Q. U.S. Bank National Association is</p> <p>13 who you are talking about questioning</p> <p>14 whether it was a real bank?</p> <p>15 A. I don't remember who the bank was</p> <p>16 but it is in the e-mail.</p> <p>17 Q. If you look at the last page of</p> <p>18 this exhibit.</p> <p>19 A. I wrote him an e-mail about it</p> <p>20 where I basically said, in sum and</p> <p>21 substance, it will always come down to a</p> <p>22 matter of trust, if somebody wants to commit</p> <p>23 an elaborate fraud with fake bank officers I</p> <p>24 guess they can do it.</p> <p>25 But other than to suggest when I</p>	<p style="text-align: right;">Page 79</p> <p>1 Wolfson</p> <p>2 that is London time?</p> <p>3 A. Yes.</p> <p>4 Q. Probably 12:34 here?</p> <p>5 A. Yes.</p> <p>6 Q. It is actually 17:34 but we all</p> <p>7 recognize you subtract 12 gives you 5:34?</p> <p>8 A. Okay.</p> <p>9 Q. Here is where he is forwarding to</p> <p>10 you the letter of credit with his question</p> <p>11 about an assignment, he is asking for your</p> <p>12 opinion?</p> <p>13 A. I should say this is about the</p> <p>14 assignment where I gave that one line</p> <p>15 opinion that you referenced before.</p> <p>16 This is not where I did the Google</p> <p>17 search about the bank. I believe that</p> <p>18 occurred later.</p> <p>19 Q. I think you are right.</p> <p>20 Again he has marked both of these</p> <p>21 e-mails urgent and he notes tragically I</p> <p>22 need an answer yesterday as usual?</p> <p>23 A. As usual.</p> <p>24 Q. So the second one comes in at</p> <p>25 12:45 p.m. New York time, correct, the one</p>
<p style="text-align: right;">Page 78</p> <p>1 Wolfson</p> <p>2 Google search it I see there is something --</p> <p>3 this bank seems to exist on the web.</p> <p>4 Something to that effect. It is in the</p> <p>5 e-mail. I am sure you will mark it.</p> <p>6 Q. I will bet they did.</p> <p>7 But you don't recall when that</p> <p>8 came to you?</p> <p>9 A. No. It was later as I recall.</p> <p>10 It would actually maybe be in my</p> <p>11 billing slip invoice. Let me see. I</p> <p>12 mean -- it appears I may not have even</p> <p>13 billed for it. If I did I would say it is</p> <p>14 around the middle of December, December 15</p> <p>15 maybe.</p> <p>16 Q. Let's look at Exhibit 9. That may</p> <p>17 help once it gets marked.</p> <p>18 Why don't we talk about number 10.</p> <p>19 (Two e-mails from Mr. Seward on</p> <p>20 December 1 was marked Exhibit 10 for</p> <p>21 identification)</p> <p>22 BY MR. WINTON:</p> <p>23 Q. This is a series of two e-mails</p> <p>24 from Mr. Seward still on December 1. The</p> <p>25 first one the time stamp is 5:34. I assume</p>	<p style="text-align: right;">Page 80</p> <p>1 Wolfson</p> <p>2 on top?</p> <p>3 A. Appears to, yes.</p> <p>4 Q. It looks like they were about 11</p> <p>5 minutes apart?</p> <p>6 A. I think you have to give or take</p> <p>7 at least an hour or two. I don't know.</p> <p>8 MR. WINTON: Number 11.</p> <p>9 (Four-page series of e-mails was</p> <p>10 marked Exhibit 11 for identification)</p> <p>11 BY MR. WINTON:</p> <p>12 Q. Take a look, if you would, at what</p> <p>13 we marked as Exhibit 11.</p> <p>14 This is a four-page series of</p> <p>15 e-mails?</p> <p>16 A. Yes.</p> <p>17 Q. Only three of which really have</p> <p>18 e-mails on them?</p> <p>19 A. Yes.</p> <p>20 Q. And if you look at the third page</p> <p>21 it is a carryover from the bottom of the</p> <p>22 second page so I guess you have to start at</p> <p>23 the bottom of the second page and the top of</p> <p>24 the third.</p> <p>25 Would you agree that is the first</p>

<p style="text-align: right;">Page 81</p> <p>1 Wolfson</p> <p>2 new e-mail in this chain of e-mails?</p> <p>3 Because the bottom one is a repeat</p> <p>4 of the one we just looked at.</p> <p>5 A. Yes. I think what happened was</p> <p>6 Exhibit 10 he followed up on his mobile and</p> <p>7 I replied to the preceding e-mail so, yes,</p> <p>8 the first e-mail we have -- first content we</p> <p>9 haven't seen before begins at the bottom of</p> <p>10 page 2.</p> <p>11 Q. Right. That is why we get these</p> <p>12 disconnects in e-mails.</p> <p>13 I suspect what you did is you went</p> <p>14 back and replied to the substantive e-mail</p> <p>15 so that his question and your response are</p> <p>16 juxtaposed to each other rather than having</p> <p>17 the other e-mail that is really saying this</p> <p>18 is urgent?</p> <p>19 A. It may have just been random. I</p> <p>20 don't have a system for that.</p> <p>21 Q. Okay. The response of yours that</p> <p>22 is at the top of page 3 of Exhibit 11 is</p> <p>23 your legal opinion back to him in response</p> <p>24 to his question, right?</p> <p>25 A. Again, you are characterizing it</p>	<p style="text-align: right;">Page 83</p> <p>1 Wolfson</p> <p>2 It is like -- it was a silly question</p> <p>3 because it was really just a commercial</p> <p>4 issue and not really a legal issue. He knew</p> <p>5 full well there was nothing wrong with the</p> <p>6 assignment and that is all it says.</p> <p>7 Q. Some of these questions are</p> <p>8 innocent simply to set up the next e-mail</p> <p>9 because the next e-mail he comes back and</p> <p>10 says, would you mind having a little dig</p> <p>11 which I interpret to mean, thanks for your</p> <p>12 offered -- offered opinion, would you do a</p> <p>13 little bit more thinking and research on it.</p> <p>14 Would you agree?</p> <p>15 A. I would agree and I came back to</p> <p>16 him with the same -- yes.</p> <p>17 MR. KEANE: I want to see my wife</p> <p>18 and kid and again before this week is</p> <p>19 over.</p> <p>20 MS. OROZCO: And I want to go</p> <p>21 to --</p> <p>22 MR. WINTON: And I have a flight</p> <p>23 tomorrow morning so I want to make it.</p> <p>24 It is really looking in jeopardy at the</p> <p>25 moment.</p>
<p style="text-align: right;">Page 82</p> <p>1 Wolfson</p> <p>2 as you characterizing it but, yes, I mean it</p> <p>3 seemed a simple matter to me and to the</p> <p>4 extent he was asking whether this was an</p> <p>5 assignment like this is contrary to law and</p> <p>6 I said no, it is really a commercial matter.</p> <p>7 It really speaks for itself.</p> <p>8 Q. And what you are saying with this</p> <p>9 e-mail is effectively this is kind of off</p> <p>10 the top of my head, I don't see a problem</p> <p>11 with it, fair statement?</p> <p>12 A. It is an assignment. I mean I</p> <p>13 wasn't even sure what he was asking. I got</p> <p>14 the impression he was asking me for some</p> <p>15 sort of assurance that this was some sort of</p> <p>16 risk-free transaction. I refused to give it</p> <p>17 to him.</p> <p>18 Q. Would you agree that your response</p> <p>19 here at the top of page 3 of Exhibit 11 is</p> <p>20 saying this is a, off the top of my head</p> <p>21 response, I haven't gone out and done a</p> <p>22 bunch of research on it?</p> <p>23 A. There was really no need. It is</p> <p>24 an assignment.</p> <p>25 Yes. I didn't do any research.</p>	<p style="text-align: right;">Page 84</p> <p>1 Wolfson</p> <p>2 MS. OROZCO: That would really be</p> <p>3 a problem.</p> <p>4 BY MR. WINTON:</p> <p>5 Q. So then he responds here and we</p> <p>6 don't have your response to his would you</p> <p>7 give it a little dig?</p> <p>8 A. Probably because I didn't respond</p> <p>9 to it.</p> <p>10 Q. Okay.</p> <p>11 A. The next response you have from me</p> <p>12 is -- appears --</p> <p>13 Q. Well, you do at the bottom of page</p> <p>14 1 it looks like is your response to the</p> <p>15 would you mind having a little dig?</p> <p>16 A. That's right.</p> <p>17 Q. Okay. So then he comes back and</p> <p>18 says, "Under huge time pressure so you will</p> <p>19 get \$500,000 for the escrow shortly in case</p> <p>20 we do the deal. Any other thoughts on the</p> <p>21 assignment?"</p> <p>22 Asking again about the assignment,</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. So we are at 2:56 p.m. on</p>

<p style="text-align: right;">Page 85</p> <p>1 Wolfson</p> <p>2 December 16789 that is probably New York</p> <p>3 time, would you agree?</p> <p>4 A. Yes. Probably. Yes. It seems to</p> <p>5 have that Wednesday first it is New York</p> <p>6 time.</p> <p>7 Q. Wednesday comes first when it is</p> <p>8 New York time is what he is saying.</p> <p>9 Okay. So now we have an e-mail</p> <p>10 from you to Mr. Seward, Wednesday,</p> <p>11 December 1, and it says 20:01 so that is</p> <p>12 going to be 3:00, 3:01 New York time, right?</p> <p>13 A. I guess so.</p> <p>14 Q. It wouldn't have been 8:00 at</p> <p>15 night on Wednesday here at the time you had</p> <p>16 this -- you sent this e-mail?</p> <p>17 A. No. I was not here at' 8:00.</p> <p>18 Q. Okay. So this time stamp here is</p> <p>19 20:01 so minus 12 is 8 minus 5 is 3:01?</p> <p>20 A. That's right.</p> <p>21 Q. Don't make me do math. It is</p> <p>22 really ugly.</p> <p>23 And so the first line of this is</p> <p>24 your legal advice, your response to his</p> <p>25 question please have a little dig, right?</p>	<p style="text-align: right;">Page 87</p> <p>1 Wolfson</p> <p>2 Q. At the time you did this you</p> <p>3 thought Tomo was charterer's attorney?</p> <p>4 A. He said -- I may have just</p> <p>5 misspoken but he said he is the counsel for</p> <p>6 the people sending the \$500,000 so it may</p> <p>7 well be that I just said, like I said, I use</p> <p>8 the word "charterers" loosely.</p> <p>9 Q. And you since learned that Tom</p> <p>10 Moloney was the general counsel to American</p> <p>11 Energy Services?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you note here, "They</p> <p>14 say they are supposed to wire 500,000 to our</p> <p>15 account simply to prove they have such funds</p> <p>16 available."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And that is what Mr. Moloney told</p> <p>20 you, correct?</p> <p>21 A. That is what he said. Oh, well,</p> <p>22 he said that after I inquired because first</p> <p>23 he said, you know, I need confirmation from</p> <p>24 you, confirmation from you and again this</p> <p>25 was the product of negotiations that had</p>
<p style="text-align: right;">Page 86</p> <p>1 Wolfson</p> <p>2 A. I just had a very simple response</p> <p>3 about how you could have multiple partial</p> <p>4 assignments which was a simple matter and</p> <p>5 that is what I gave him.</p> <p>6 Q. Your next line you referred to</p> <p>7 before you told him NB, note benne, that you</p> <p>8 don't get interest on an IOLA account in New</p> <p>9 York, is what you are telling him?</p> <p>10 A. That's right. The escrow</p> <p>11 agreement as worded sort of made that okay</p> <p>12 but I thought maybe it could be just</p> <p>13 clarified a little bit more.</p> <p>14 It turns out I don't know if it</p> <p>15 ever was but that was my only comment on the</p> <p>16 escrow agreement.</p> <p>17 Q. Okay. And then the next thing</p> <p>18 that this e-mail does is you indicate and</p> <p>19 you have referred to this e-mail previously?</p> <p>20 A. Yes.</p> <p>21 Q. That you just received a call from</p> <p>22 charterer's attorneys in Ohio and what you</p> <p>23 are referring to there is a phone call from</p> <p>24 Tom Moloney from AES, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 Wolfson</p> <p>2 been going without my involvement.</p> <p>3 Confirmation that I can get the funds back</p> <p>4 from you upon demand.</p> <p>5 And I was like what is that about,</p> <p>6 why are you sending them to me, and he said,</p> <p>7 oh, just so we can show that we have the</p> <p>8 money which didn't make much sense to me and</p> <p>9 so that is why -- I am jumping ahead. That</p> <p>10 is why I followed up with Mark about it.</p> <p>11 Q. You indicated earlier that one of</p> <p>12 the things that he said was he wanted to be</p> <p>13 able to get this money back until he had</p> <p>14 security for the money, correct?</p> <p>15 A. Well, in the first conversation I</p> <p>16 really didn't understand what he was about.</p> <p>17 He said I -- he wanted this agreement to get</p> <p>18 the money back. It was only -- so it made</p> <p>19 no sense to me and I wrote to Mark and he</p> <p>20 said until the escrow agreement is reached</p> <p>21 and then I got Mr. Moloney's letter and I</p> <p>22 said well, now I understand, he wanted</p> <p>23 assurance he can get it back during that</p> <p>24 period.</p> <p>25 I was expecting just to have the</p>

<p style="text-align: right;">Page 89</p> <p>1 Wolfson</p> <p>2 money to come into escrow. I wasn't</p> <p>3 expecting this interim agreement.</p> <p>4 MR. WINTON: Objection.</p> <p>5 Non-responsive.</p> <p>6 BY MR. WINTON:</p> <p>7 Q. You indicated previously that what</p> <p>8 Mr. Moloney said was he wanted to be able to</p> <p>9 get the money back until security had been</p> <p>10 arranged to secure AES's position, correct?</p> <p>11 A. I don't know if he said that.</p> <p>12 He just said he wanted -- the</p> <p>13 funds would become the escrow if the other</p> <p>14 agreements upon which -- if the other</p> <p>15 agreements the parties were still</p> <p>16 negotiating came to fruition otherwise they</p> <p>17 would be returned.</p> <p>18 Q. Including security?</p> <p>19 A. Including security. For all he</p> <p>20 knew, for all I knew, somebody else would be</p> <p>21 putting in the \$500,000 and they would get</p> <p>22 it back.</p> <p>23 All I know is that he wanted</p> <p>24 assurance that that \$500,000 could be taken</p> <p>25 back before the final agreement on the</p>	<p style="text-align: right;">Page 91</p> <p>1 Wolfson</p> <p>2 escrow money and then have an agreement</p> <p>3 saying he can take it back whenever he</p> <p>4 wanted.</p> <p>5 Q. Let's go on with the e-mail you</p> <p>6 sent to Mr. Seward.</p> <p>7 MR. WINTON: Objection.</p> <p>8 Non-responsive.</p> <p>9 BY MR. WINTON:</p> <p>10 Q. Let's go on with the e-mail.</p> <p>11 "They want me to first confirm in</p> <p>12 writing that the funds must and will be</p> <p>13 wired back to them at any time upon their</p> <p>14 demand whether or not other security is in</p> <p>15 place."</p> <p>16 A. Yes.</p> <p>17 Q. Okay?</p> <p>18 A. Yes.</p> <p>19 Q. Very clear there?</p> <p>20 A. Yes.</p> <p>21 Q. At any time on demand --</p> <p>22 A. That's right.</p> <p>23 Q. -- the money comes back to them.</p> <p>24 That is what Tom Moloney told you?</p> <p>25 A. That's right. I wasn't aware --</p>
<p style="text-align: right;">Page 90</p> <p>1 Wolfson</p> <p>2 escrow was reached.</p> <p>3 Q. Including security?</p> <p>4 A. Whatever is in the escrow</p> <p>5 agreement. I don't know what you are</p> <p>6 referring to.</p> <p>7 Q. He used the term "security,"</p> <p>8 right? He wanted to be able to pull the</p> <p>9 money back until security for the money was</p> <p>10 arranged?</p> <p>11 A. He didn't really say. That is</p> <p>12 what made it so unclear to me because when I</p> <p>13 talked to him he said, this is just to show</p> <p>14 we have the money and I need agreement that</p> <p>15 I can get the money back.</p> <p>16 And I -- didn't make any sense to</p> <p>17 me and I questioned him about it and I never</p> <p>18 got a real answer about what the deal was</p> <p>19 about. So I never knew what was going on.</p> <p>20 It frankly made no sense to me</p> <p>21 that conversation so then I wrote to Mark</p> <p>22 Seward about it and he said, then I</p> <p>23 understood only then, that this was an</p> <p>24 interim arrangement because I didn't</p> <p>25 understand why he wants to send me the</p>	<p style="text-align: right;">Page 92</p> <p>1 Wolfson</p> <p>2 yes. That's right.</p> <p>3 Q. That is what he said?</p> <p>4 A. That is what he said.</p> <p>5 Q. Okay. And you asked Mr. Seward,</p> <p>6 is that true, should I send them such</p> <p>7 written confirmation?</p> <p>8 A. Yes. I knew that couldn't be</p> <p>9 right. That is why I said that. It made no</p> <p>10 sense to me.</p> <p>11 MR. KEANE: He is just asking if</p> <p>12 that is what you said.</p> <p>13 THE WITNESS: Yes. That is what I</p> <p>14 said.</p> <p>15 BY MR. WINTON:</p> <p>16 Q. Then Mr. Seward responds at 3:33</p> <p>17 that same afternoon, "Of course same here,</p> <p>18 .05 percent max."</p> <p>19 Is it your understanding he is</p> <p>20 responding to your middle comment about</p> <p>21 interest on escrow accounts?</p> <p>22 A. Yes. I think he is just talking</p> <p>23 about what happens with English trust</p> <p>24 accounts. I don't know.</p> <p>25 Q. He starts out with, "Of course,"</p>

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1 Wolfson
 2 which could mean he is confirming?
 3 **A. Confirming, I thought it was about**
 4 **the interest.**
 5 Q. It is not clear, is it?
 6 **A. No. But it certainly wasn't**
 7 **responding to my comment about the call from**
 8 **Mr. Moloney.**
 9 Q. How do you know that? All he says
 10 is "of course" and then he goes on with a
 11 separate sentence.
 12 **A. Okay. This goes back to what we**
 13 **are saying about people can read words**
 14 **differently. Your interpretation is like**
 15 **left field. I am sorry. That is not the**
 16 **way I read it at all.**
 17 Q. Well, certainly you --
 18 **A. In fact he followed up.**
 19 Q. I know. But certainly when you
 20 get to the next e-mail it makes it clear but
 21 that one is --
 22 **A. When I read this I -- didn't even**
 23 **occur to me for one thing that he was saying**
 24 **of course to what Mr. Moloney was saying.**
 25 Q. Okay. Let's go on to the next

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1 Wolfson
 2 e-mail. This is 3:41 so nine minutes --
 3 eight minutes later?
 4 **A. Yes.**
 5 Q. See, don't make me do math.
 6 Eight minutes later he comes back
 7 with another e-mail marked "Urgent."
 8 He says, "You can confirm the
 9 money will be wired back 'if the charter
 10 party and escrow are not executed.' We
 11 intend to execute the escrow tonight and I
 12 will send you the final version when it is
 13 to hand shortly."
 14 **A. Yes.**
 15 Q. Was it your understanding when he
 16 said, "You can confirm the money will be
 17 wired back 'if the charter party and escrow
 18 are not executed,'" that he was telling you
 19 go tell Mr. Moloney the following?
 20 **A. No. He was saying what the**
 21 **arrangement would be with the coming**
 22 **agreement with AES would be that that is the**
 23 **way the money would come back.**
 24 Q. He says, you can confirm the money
 25 will be wired back with a quote. You can

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1 Wolfson
 2 confirm. You asked him, can I confirm to
 3 Mr. Moloney what Moloney said and Seward
 4 says you can confirm this. You did not read
 5 that to mean go back to them and tell them
 6 the following?
 7 **A. No. This was the confirmation in**
 8 **writing that Mr. Moloney was talking about**
 9 **and he wanted a formal agreement on our**
 10 **letterhead, which came in just around the**
 11 **exact same time maybe within a few minutes.**
 12 **Moreover, this was what was going**
 13 **on as far as the negotiations between these**
 14 **parties, between Estech, Milestone and AES**
 15 **as to what kind of agreement they were going**
 16 **to have in place so I understood what the**
 17 **situation was.**
 18 **I understood now what Mr. Moloney**
 19 **was talking about and I was waiting for the**
 20 **parties to reach the agreement which -- I**
 21 **got this letter and it seemed to address**
 22 **Mr. Seward's concern by saying that AES's**
 23 **right to the return of the money would only**
 24 **be prior to the escrow agreement being**
 25 **reached and so I said, Mark, is this what**

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1 **Wolfson**
 2 **you want me to sign on to or not. And so**
 3 **then the final confirmation came when I**
 4 **signed that letter.**
 5 MR. WINTON: Objection.
 6 Non-responsive.
 7 BY MR. WINTON:
 8 Q. Truly I am not going to make my
 9 flight tomorrow morning if you keep this up.
 10 MS. OROZCO: Let's take a quick
 11 break.
 12 (Recess)
 13 BY MR. WINTON:
 14 Q. Back on the record.
 15 Would it be fair to say that you
 16 did not at any time and any time is talking
 17 about the 1st, 2nd of December, not talking
 18 about the 23rd, 29th, any of that stuff at
 19 the back end when everybody knows there is a
 20 dispute.
 21 Back at the time these documents
 22 were being worked on would it be fair to say
 23 that you never contacted Tom Moloney and
 24 said, Tom, there is something weird going on
 25 here, I ran your position by Milestone's

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1 Wolfson
 2 representatives and they said, no, totally
 3 different deal. What is up. You never
 4 contacted --
 5 **A. Jim, you want a yes or no answer**
 6 **but then you ask a question like that.**
 7 **I never contacted him and said**
 8 **those words. I never perceived it that way.**
 9 Q. I am not asking you if you used
 10 those words. Did you in response to this
 11 e-mail that we are looking at --
 12 **A. I did not contact AES after that**
 13 **e-mail. AES contacted me.**
 14 Q. Would you agree with me that what
 15 Mr. Seward is saying here in this
 16 December 1, 3:41 p.m. e-mail to you is quite
 17 different from what Mr. Moloney said to you
 18 in -- that you have recorded in your 3:01
 19 p.m. e-mail to Mr. Seward?
 20 **A. I wouldn't say that because what I**
 21 **would say is I didn't really understand what**
 22 **Mr. Moloney was saying and when Mark said**
 23 **that, it put it all in context and I**
 24 **understood what he was saying so my -- what**
 25 **I took from my conversation from Mr. Moloney**

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1 Wolfson
 2 **was wrong and I would say my initial**
 3 **understanding was very different than my**
 4 **subsequent understanding.**
 5 Q. So you are getting -- you are
 6 going to be entering a relationship with AES
 7 where you are going to undertake a fiduciary
 8 duty to AES and you base your understanding
 9 of AES's position on what somebody else told
 10 you that being Mr. Seward?
 11 **A. No. I got the letter agreement.**
 12 Q. We are going to come to the letter
 13 agreement.
 14 **A. If there was no letter agreement**
 15 **there would have been much more going --**
 16 **communication going on but in fact, like I**
 17 **said, within minutes I received the proposed**
 18 **draft from AES.**
 19 Q. Would you agree with me, and I
 20 think that is what you just said, you would
 21 agree that this statement that Mr. Moloney
 22 made to you that is recorded in your 3:01
 23 p.m. e-mail to Mr. Seward and Mr. Seward's
 24 3:41 p.m. statement back to you are in
 25 conflict with each other based on those

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1 Wolfson
 2 statements alone?
 3 **A. No. Because I think it could be**
 4 **consistent if I had understood that**
 5 **Mr. Moloney was just talking about that**
 6 **period before the escrow was reached, it is**
 7 **consistent. That wasn't made clear to me.**
 8 **I didn't know what he was talking about.**
 9 Q. And will be wired back to AES at
 10 any time upon demand whether or not security
 11 is in place?
 12 **A. Right.**
 13 Q. Those are pretty clear words,
 14 aren't they, "at any time"?
 15 **A. Those are my words. They weren't**
 16 **his words.**
 17 Q. But I thought you said that is
 18 what he said to you?
 19 **A. That is what I took from what he**
 20 **said. If I misunderstood it I**
 21 **misunderstood. I didn't understand what was**
 22 **going on, that we were talking about an**
 23 **interim agreement that he could take it back**
 24 **at any time during that period. That is**
 25 **what I didn't understand.**

Page 100

1 Wolfson
 2 Q. So you didn't feel as a person
 3 entering a fiduciary relationship with AES
 4 that you owed it to AES to confirm with AES
 5 on the phone what the deal was here?
 6 **A. Like I said --**
 7 MR. KEANE: Asked and answered.
 8 THE WITNESS: I would have but I
 9 got the draft which put it all in
 10 writing.
 11 If I didn't have that draft I most
 12 assuredly would have had more
 13 conversation but I did.
 14 MR. WINTON: Yes.
 15 THE WITNESS: If you are talking
 16 about the letter --
 17 MR. WINTON: Exhibit 12.
 18 (Three-page document Bates stamped
 19 027, 028, 029 was marked Exhibit 12 for
 20 identification)
 21 BY MR. WINTON:
 22 Q. I would like you to take a look at
 23 what we marked as Exhibit 12.
 24 MS. OROZCO: Six pages, right,
 25 0027 to 0032?

<p style="text-align: right;">Page 101</p> <p>1 Wolfson</p> <p>2 MR. WINTON: No. This one is</p> <p>3 actually 027, 028, 029.</p> <p>4 BY MR. WINTON:</p> <p>5 Q. Exhibit 12.</p> <p>6 A. Got it.</p> <p>7 Q. The bottom of the first page and</p> <p>8 would you agree with me that this exhibit</p> <p>9 consists of three pages, the first one being</p> <p>10 a series of e-mails, the second one is just</p> <p>11 the trailer from that first page and then</p> <p>12 the last page is a proposed letter</p> <p>13 agreement?</p> <p>14 A. Yes. It actually says -- again we</p> <p>15 can call it, escrow agreement. Whatever.</p> <p>16 Q. At the bottom is Mr. Moloney's</p> <p>17 e-mail to you at 4:17 p.m. New York time.</p> <p>18 A. Yes.</p> <p>19 Q. And fortunately both Columbus and</p> <p>20 New York are in the same time zone so we</p> <p>21 don't have to go through that.</p> <p>22 A. But as you can see there is some</p> <p>23 difference in the computer times because my</p> <p>24 forwarding of that letter is actually --</p> <p>25 precedes the time by 14 minutes so there is</p>	<p style="text-align: right;">Page 103</p> <p>1 Wolfson</p> <p>2 a letter that Mr. Moloney drafted for you to</p> <p>3 put on your letterhead and send back to him;</p> <p>4 is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And you were supposed to insert</p> <p>7 your wiring instructions?</p> <p>8 A. That's correct.</p> <p>9 Q. Mr. Moloney says to you, "Call if</p> <p>10 you have any questions or comments."</p> <p>11 That is what that e-mail says,</p> <p>12 right?</p> <p>13 A. That is what it says.</p> <p>14 Q. So you then forward that to</p> <p>15 Mr. Seward asking if he authorizes you to</p> <p>16 sign it, right?</p> <p>17 A. I said please let us know if we</p> <p>18 should sign on to this language.</p> <p>19 Q. Okay. So you are asking him to</p> <p>20 authorize you to execute it?</p> <p>21 A. I want to know if he wants us to</p> <p>22 sign it or not.</p> <p>23 Q. Then the top e-mail you are going</p> <p>24 back to Mr. Seward saying, I haven't heard</p> <p>25 from you, effectively what you are saying is</p>
<p style="text-align: right;">Page 102</p> <p>1 Wolfson</p> <p>2 some -- again I would say within an hour or</p> <p>3 so but --</p> <p>4 Q. There is clearly some imprecision</p> <p>5 in the clocks.</p> <p>6 A. That's right. I recall receiving</p> <p>7 this right around the time that Mark</p> <p>8 responded to my e-mail that we just</p> <p>9 discussed.</p> <p>10 Q. But I think you would agree that</p> <p>11 these three e-mails do occur in this</p> <p>12 sequence from bottom to top?</p> <p>13 A. The sequence is correct, yes.</p> <p>14 Q. So now we have Mr. Moloney's</p> <p>15 e-mail to you at 4:17 p.m.-ish saying,</p> <p>16 "Attached is a proposed letter to us from</p> <p>17 your firm. Call if you have any questions</p> <p>18 or comments when you e-mail it back.</p> <p>19 Depending on the status of the escrow</p> <p>20 agreement draft we may not be wiring until</p> <p>21 morning but we should probably get this</p> <p>22 letter out this afternoon. Thanks. Tom."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And then we have attached to that</p>	<p style="text-align: right;">Page 104</p> <p>1 Wolfson</p> <p>2 I haven't heard from you, I am going to have</p> <p>3 to leave, can we finish this up in the</p> <p>4 morning.</p> <p>5 A. Yes, I wasn't there at 8:00. I</p> <p>6 had to leave early that evening. I forget</p> <p>7 exactly why.</p> <p>8 But I wanted to let Mark know that</p> <p>9 since AES wanted it on our letterhead I</p> <p>10 would need to be in the office and I wasn't</p> <p>11 going to be in the office that evening.</p> <p>12 Q. Okay. So let's look at the</p> <p>13 document that Mr. Moloney sent to you.</p> <p>14 This is the letter agreement that</p> <p>15 we have talked about with you from time to</p> <p>16 time referred to as the side agreement --</p> <p>17 A. Yes.</p> <p>18 Q. -- before it goes into final,</p> <p>19 right?</p> <p>20 A. Yes. Although I am noticing his</p> <p>21 own subject is escrow agreement.</p> <p>22 Q. Sure doesn't say side letter, does</p> <p>23 it?</p> <p>24 A. No.</p> <p>25 Q. Okay. In the first paragraph, and</p>

<p style="text-align: right;">Page 105</p> <p>1 Wolfson</p> <p>2 this is the wording that ultimately became</p> <p>3 the letter agreement with AES but for the</p> <p>4 insertion of the language in the middle,</p> <p>5 correct?</p> <p>6 A. There is not a word of it that was</p> <p>7 changed.</p> <p>8 I changed the date and I inserted</p> <p>9 the wiring instructions which were the same</p> <p>10 as those in the escrow agreement and that</p> <p>11 was it. Put in my name and title.</p> <p>12 Q. So rather than talk about that the</p> <p>13 actual agreement, the actual letter that you</p> <p>14 signed is coming up so why don't we save</p> <p>15 that and deal with it in that.</p> <p>16 A. Okay.</p> <p>17 MR. WINTON: So the next exchange</p> <p>18 is Exhibit 13.</p> <p>19 (E-mail was marked Exhibit 13 for</p> <p>20 identification)</p> <p>21 BY MR. WINTON:</p> <p>22 Q. I think you will see on the second</p> <p>23 page of Exhibit 13 is a repeat of that last</p> <p>24 e-mail from you saying, I got to leave</p> <p>25 shortly, we have to do this in the morning?</p>	<p style="text-align: right;">Page 107</p> <p>1 Wolfson</p> <p>2 from AES.</p> <p>3 Q. So you understood release to refer</p> <p>4 to this letter agreement with AES?</p> <p>5 A. Yes.</p> <p>6 Q. You go back to him 22 minutes</p> <p>7 later or so telling, Mr. Seward should have</p> <p>8 it out within a half an hour or so. You are</p> <p>9 talking about the trust letter with AES?</p> <p>10 A. Yes. I said I am in transit now,</p> <p>11 I was on my way to the office, should have</p> <p>12 it out within a half hour or so.</p> <p>13 Q. And I take it you would agree with</p> <p>14 me that when you got Mr. Moloney's letter</p> <p>15 late in the afternoon on the 1st what you</p> <p>16 did with it was you sent it to Mr. Seward,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. But you didn't go back to</p> <p>20 Mr. Moloney and in response to his call or</p> <p>21 questions or comments and even repeat for</p> <p>22 him what Mr. Seward had said, you can</p> <p>23 commit -- you can confirm, sorry, the money</p> <p>24 will be wired back if the charter party and</p> <p>25 escrows are not executed?</p>
<p style="text-align: right;">Page 106</p> <p>1 Wolfson</p> <p>2 A. Yes.</p> <p>3 Q. So he comes back to you at what I</p> <p>4 believe would be 5:47 a.m. the next morning,</p> <p>5 right?</p> <p>6 A. I think that is right.</p> <p>7 Q. He is asking can you sign and</p> <p>8 return to them when you get in?</p> <p>9 A. Yes.</p> <p>10 Q. So did you interpret that to mean</p> <p>11 he was authorizing you to sign that letter?</p> <p>12 A. Yes. I actually don't know how</p> <p>13 else one could interpret that.</p> <p>14 Q. It wasn't a trick question that is</p> <p>15 how I read it but how I read it is really</p> <p>16 not important, it is how you read it.</p> <p>17 A. Okay.</p> <p>18 Q. Then he comes back four hours</p> <p>19 later and he says, "he" being Seward, "I</p> <p>20 need not to loose time. Can you sign that</p> <p>21 release please."</p> <p>22 Do you have an understanding of</p> <p>23 what "that release" refers to?</p> <p>24 A. He is talking about the letter</p> <p>25 agreement that I previously forwarded him</p>	<p style="text-align: right;">Page 108</p> <p>1 Wolfson</p> <p>2 MR. KEANE: Asked and answered.</p> <p>3 THE WITNESS: The whole agreement</p> <p>4 is in the written agreement now -- the</p> <p>5 written letter. That was what was under</p> <p>6 consideration so that those prior</p> <p>7 advices were mooted by the fact --</p> <p>8 BY MR. WINTON:</p> <p>9 Q. It has not been executed as of</p> <p>10 December 1 in the afternoon?</p> <p>11 A. Right.</p> <p>12 Q. And Mr. Moloney had told you what</p> <p>13 his intent was that the money would come</p> <p>14 back at any time on demand and you went to</p> <p>15 Mr. Seward to get confirmation but you never</p> <p>16 went back to Mr. Moloney to say --</p> <p>17 A. No, because --</p> <p>18 Q. -- is this right?</p> <p>19 MR. KEANE: Asked and answered.</p> <p>20 THE WITNESS: No. The letter said</p> <p>21 it.</p> <p>22 MR. KEANE: Let him finish the</p> <p>23 question.</p> <p>24 MR. WINTON: He answered it. "No"</p> <p>25 was it.</p>

<p style="text-align: right;">Page 109</p> <p>1 Wolfson</p> <p>2 THE WITNESS: No, I answered --</p> <p>3 the letter said it.</p> <p>4 MR. KEANE: Off the record.</p> <p>5 (Discussion off the record)</p> <p>6 MR. WINTON: Number 14.</p> <p>7 (Set of two e-mails with executed</p> <p>8 December 2 letter agreement with AES</p> <p>9 attached was marked Exhibit 14 for</p> <p>10 identification)</p> <p>11 BY MR. WINTON:</p> <p>12 Q. Exhibit 14 is a set of two e-mails</p> <p>13 with an attachment that being the actual</p> <p>14 executed December 2 letter agreement with</p> <p>15 AES, would you agree?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Two pages. M&K33 and 34.</p> <p>18 The bottom one is in fact a repeat</p> <p>19 of the one we just looked at, correct?</p> <p>20 A. Yes, it is.</p> <p>21 Q. So the top one is your e-mail back</p> <p>22 to Mr. Moloney attaching the executed</p> <p>23 letter, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. So you sent this back 9:49 New</p>	<p style="text-align: right;">Page 111</p> <p>1 Wolfson</p> <p>2 THE WITNESS: I am just saying he</p> <p>3 obviously thought it was important what</p> <p>4 he wanted to do.</p> <p>5 BY MR. WINTON:</p> <p>6 Q. Mr. Seward however may have been</p> <p>7 assuming that you had conveyed to</p> <p>8 Mr. Moloney what he said you can confirm to</p> <p>9 AES the following --</p> <p>10 A. What --</p> <p>11 Q. Would you agree that may have been</p> <p>12 in Mr. Seward's mind?</p> <p>13 A. No. When I say confirm in writing</p> <p>14 this is the confirm in writing.</p> <p>15 Q. It didn't say in writing. It said</p> <p>16 you may confirm.</p> <p>17 A. My e-mail said they want us to</p> <p>18 confirm in writing.</p> <p>19 His response says you may confirm</p> <p>20 what he said. He was referring to the</p> <p>21 confirming in writing which came at exactly</p> <p>22 the same time.</p> <p>23 Q. And if you will look at it he has</p> <p>24 put quotes around the words, "If the charter</p> <p>25 party and escrow are not executed."</p>
<p style="text-align: right;">Page 110</p> <p>1 Wolfson</p> <p>2 York time on the 2nd?</p> <p>3 A. Again, roughly, yes. It was after</p> <p>4 Seward's response saying thanks and I sent</p> <p>5 it off.</p> <p>6 Q. You have said repeatedly that --</p> <p>7 let's look at the letter itself.</p> <p>8 You have said repeatedly that you</p> <p>9 believe that letter is entirely consistent</p> <p>10 with what Mr. Seward told you?</p> <p>11 A. Yes. I also was appreciating the</p> <p>12 fact there were negotiations going on</p> <p>13 throughout and I didn't know what the final</p> <p>14 form would look like. This is it.</p> <p>15 Q. So, yes, you read this letter to</p> <p>16 be consistent with Mr. Seward's statement to</p> <p>17 you of the evening before that the money was</p> <p>18 returnable on demand to AES upon AES demand</p> <p>19 only until the escrow agreement and the</p> <p>20 charter party were signed?</p> <p>21 A. Yes. I did. More importantly</p> <p>22 Mr. Seward said he want us to sign it, so</p> <p>23 yes.</p> <p>24 MR. WINTON: Objection.</p> <p>25 Non-responsive.</p>	<p style="text-align: right;">Page 112</p> <p>1 Wolfson</p> <p>2 Correct? Correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Show me those words in</p> <p>5 Exhibit 14, page 2 of the letter that you</p> <p>6 signed with AES. Show me those words.</p> <p>7 A. Those exact words are not here.</p> <p>8 Other words are in here and</p> <p>9 Mr. Seward agreed to these words. So the</p> <p>10 parties are obviously still negotiating and</p> <p>11 this is the final draft they agreed upon.</p> <p>12 Q. His e-mail to you said for you to</p> <p>13 confirm quote to Moloney, right?</p> <p>14 A. He said I may confirm in the</p> <p>15 writing.</p> <p>16 Q. No. It doesn't say you may</p> <p>17 confirm in the writing. It says confirm</p> <p>18 quote.</p> <p>19 A. But you are not referring to the</p> <p>20 e-mail. Look at the e-mail.</p> <p>21 Q. Yes, sir, I am.</p> <p>22 A. When I say confirm they want us to</p> <p>23 confirm in writing. Is this okay. He says,</p> <p>24 you may confirm and then he used those words</p> <p>25 but it was referring to the confirm in</p>

<p style="text-align: right;">Page 113</p> <p>1 Wolfson</p> <p>2 writing. That is the e-mail that I wrote to</p> <p>3 him and his response was --</p> <p>4 Q. No, sir.</p> <p>5 MR. KEANE: Let's go to the actual</p> <p>6 document.</p> <p>7 BY MR. WINTON:</p> <p>8 Q. Exhibit 11.</p> <p>9 A. You want me to -- first off -- let</p> <p>10 me answer the question.</p> <p>11 MR. KEANE: Garth, there is no</p> <p>12 question pending.</p> <p>13 BY MR. WINTON:</p> <p>14 Q. Your e-mail to Mr. Seward, you</p> <p>15 state what Mr. Moloney said to you that the</p> <p>16 funds must and will be wired back to AES at</p> <p>17 any time, at any time?</p> <p>18 A. You are not reading the first</p> <p>19 words.</p> <p>20 MR. KEANE: Listen to the</p> <p>21 question.</p> <p>22 BY MR. WINTON:</p> <p>23 Q. They want you to confirm in</p> <p>24 writing that the funds must and will be</p> <p>25 wired back to AES at any time, at any time</p>	<p style="text-align: right;">Page 115</p> <p>1 Wolfson</p> <p>2 A. That exact language is not in the</p> <p>3 letter.</p> <p>4 Q. Okay. What is in the letter,</p> <p>5 let's look at the letter. First paragraph.</p> <p>6 Our firm, referring to Mahoney &</p> <p>7 Keane, correct, I am on the second line, far</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Let's get the whole thing.</p> <p>11 This is to confirm Mahoney &</p> <p>12 Keane's agreement that if American Energy</p> <p>13 Services wire transfers \$500,000 to Mahoney</p> <p>14 & Keane's trust account pursuant to the</p> <p>15 wiring instructions below our firm Mahoney &</p> <p>16 Keane shall hold such funds in trust and</p> <p>17 shall upon written request from AES to do so</p> <p>18 wire that same \$500,000 back to AES'</p> <p>19 designated account as soon as possible after</p> <p>20 our receipt of that request."</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes, you did.</p> <p>23 Q. And I will admit that I was</p> <p>24 substituting Mahoney & Keane in various</p> <p>25 places where it says "our firm"?</p>
<p style="text-align: right;">Page 114</p> <p>1 Wolfson</p> <p>2 upon their demand, at any time upon their</p> <p>3 demand. They wanted you to confirm that in</p> <p>4 writing?</p> <p>5 A. That's right.</p> <p>6 Q. And you asked Seward should I</p> <p>7 confirm that and he came back and said what</p> <p>8 you can confirm is "If the charter party and</p> <p>9 escrow are not executed." In other words</p> <p>10 that the money will come back if and only if</p> <p>11 the charter party and escrow was not</p> <p>12 executed, in quotes, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you never conveyed that</p> <p>15 information to Mr. Moloney, we have agreed</p> <p>16 with that, correct?</p> <p>17 A. I never confirmed any further</p> <p>18 information to Mr. Moloney, no.</p> <p>19 Q. Correct. Despite the fact that</p> <p>20 Mr. Seward has that language in quotes?</p> <p>21 MR. KEANE: Asked and answered.</p> <p>22 BY MR. WINTON:</p> <p>23 Q. And that language is not in the</p> <p>24 December 2 letter that Mr. Moloney sent to</p> <p>25 you?</p>	<p style="text-align: right;">Page 116</p> <p>1 Wolfson</p> <p>2 A. We have the letter marked so --</p> <p>3 MR. KEANE: I will stipulate the</p> <p>4 contents of that letter say what it says</p> <p>5 if that helps.</p> <p>6 BY MR. WINTON:</p> <p>7 Q. Would you agree with me that the</p> <p>8 words that Mr. Seward sent to you "if the</p> <p>9 charter party and escrow are not executed"</p> <p>10 is completely inconsistent with that first</p> <p>11 sentence?</p> <p>12 MR. KEANE: Objection.</p> <p>13 THE WITNESS: You are just looking</p> <p>14 at one sentence.</p> <p>15 BY MR. WINTON:</p> <p>16 Q. I am only at that first sentence</p> <p>17 right now, Mr. Wolfson.</p> <p>18 A. This is silly. This first</p> <p>19 sentence does not have any of that</p> <p>20 confirming language at all.</p> <p>21 Q. It doesn't say anything about this</p> <p>22 duty to return the money being limited by</p> <p>23 the execution of the escrow and the charter</p> <p>24 party, right?</p> <p>25 A. No. Neither does the heading at</p>

<p style="text-align: right;">Page 117</p> <p>1 Wolfson</p> <p>2 the top where it says Mahoney & Keane.</p> <p>3 MR. WINTON: Objection.</p> <p>4 Non-responsive.</p> <p>5 THE WITNESS: You are wasting our</p> <p>6 time.</p> <p>7 BY MR. WINTON:</p> <p>8 Q. No, sir. You are wasting</p> <p>9 everybody's time.</p> <p>10 MR. KEANE: Hang on.</p> <p>11 Listen to the question. Give the</p> <p>12 answer and let's move it along.</p> <p>13 BY MR. WINTON:</p> <p>14 Q. Then we have the wire transfer</p> <p>15 instructions, right?</p> <p>16 A. Yes, we do.</p> <p>17 Q. The next paragraph, last</p> <p>18 paragraph, we acknowledge, that is Mahoney &</p> <p>19 Keane, right?</p> <p>20 A. Yes.</p> <p>21 Q. That this wiring transaction is</p> <p>22 being initiated in connection with the</p> <p>23 pending arrangements between the subject</p> <p>24 parties and that we, Mahoney & Keane, are</p> <p>25 authorized to notify Milestone both upon</p>	<p style="text-align: right;">Page 119</p> <p>1 Wolfson</p> <p>2 You are placing emphasis that is</p> <p>3 going to be lost in the transcript anyway.</p> <p>4 MR. KEANE: Garth, will you just</p> <p>5 answer the question?</p> <p>6 THE WITNESS: Yes. That is what</p> <p>7 it says.</p> <p>8 BY MR. WINTON:</p> <p>9 Q. You see that is one of the</p> <p>10 privileges is, I am taking the deposition so</p> <p>11 I get to ask the question. Okay.</p> <p>12 If you want to take your own depo</p> <p>13 you can ask your own questions. You are</p> <p>14 doing a pretty good job of doing that</p> <p>15 anyway.</p> <p>16 Second sentence, in the second</p> <p>17 paragraph.</p> <p>18 MR. KEANE: Objection.</p> <p>19 BY MR. WINTON:</p> <p>20 Q. I have lots of objections.</p> <p>21 We understand, Mahoney & Keane</p> <p>22 understands that if an escrow agreement</p> <p>23 acceptable to all parties, now, all parties</p> <p>24 would include AES, wouldn't it?</p> <p>25 A. If an escrow agreement is</p>
<p style="text-align: right;">Page 118</p> <p>1 Wolfson</p> <p>2 receipt of the wire from AES, that is with</p> <p>3 the money, right?</p> <p>4 A. Yes.</p> <p>5 Q. And upon receipt of any</p> <p>6 instruction from AES to wire back the fund</p> <p>7 transferred to our firm's account.</p> <p>8 So you have been authorized both</p> <p>9 to tell Mr. Seward on behalf of Milestone</p> <p>10 that you received the money and when you</p> <p>11 receive instructions from AES to return the</p> <p>12 money?</p> <p>13 A. Yes. It says what it says.</p> <p>14 Q. You also understand that if an</p> <p>15 escrow agreement acceptable to all parties</p> <p>16 can be reached Mahoney & Keane may act as</p> <p>17 escrow agent under such an agreement in</p> <p>18 which case AES may direct that these funds</p> <p>19 be retained by our firm in such capacity.</p> <p>20 If there is an agreement AES may</p> <p>21 confirm that you are to retain them. Isn't</p> <p>22 that what that says?</p> <p>23 A. I don't understand what you are</p> <p>24 asking me because you are reading and asking</p> <p>25 to intend what it says.</p>	<p style="text-align: right;">Page 120</p> <p>1 Wolfson</p> <p>2 acceptable to all parties it is undefined</p> <p>3 but I assume it means the escrow</p> <p>4 agreement -- parties to the escrow</p> <p>5 agreement. Those are the parties to the</p> <p>6 escrow agreement.</p> <p>7 Q. So it says acceptable to all</p> <p>8 parties. It doesn't say who all parties is.</p> <p>9 It says all parties?</p> <p>10 A. When you have an agreement and you</p> <p>11 have parties to the agreement.</p> <p>12 When you are talking about parties</p> <p>13 to the agreement it necessarily refers to</p> <p>14 parties to the agreement. Other parties are</p> <p>15 not parties to the agreement.</p> <p>16 Q. So you now put your interpretation</p> <p>17 on all parties so you are limiting all</p> <p>18 parties?</p> <p>19 A. It doesn't say third parties. You</p> <p>20 are asking me to read English language and</p> <p>21 define terms for you.</p> <p>22 Q. As a fiduciary to AES?</p> <p>23 A. Is that a question?</p> <p>24 Q. You are interpreting as a</p> <p>25 fiduciary to AES.</p>

<p style="text-align: right;">Page 121</p> <p>1 Wolfson</p> <p>2 A. It is not an interpretation. I am</p> <p>3 reading English. I have a brain. I can</p> <p>4 read English.</p> <p>5 The parties to the agreement are</p> <p>6 parties to the agreement.</p> <p>7 Q. It doesn't say parties to the</p> <p>8 agreement, does it?</p> <p>9 A. Well, I guess it could be</p> <p>10 referring to anybody under the sun though I</p> <p>11 think that's a strained interpretation.</p> <p>12 Q. Does it say parties to the</p> <p>13 agreement?</p> <p>14 A. No. Nor does it say third</p> <p>15 parties.</p> <p>16 Q. Mahoney & Keane may, was it not</p> <p>17 your understanding that means might?</p> <p>18 A. No. This is authorizing us to act</p> <p>19 as escrow agent. You have to read escrow --</p> <p>20 Q. So you read this sentence that we</p> <p>21 are working on right here to mean that this</p> <p>22 agreement is authorizing you to be an escrow</p> <p>23 agent under this other agreement, is that</p> <p>24 the way you are reading that?</p> <p>25 A. If an escrow agreement acceptable</p>	<p style="text-align: right;">Page 123</p> <p>1 Wolfson</p> <p>2 agreement is reached AES may withdraw the</p> <p>3 funds or may allow the funds to stay there.</p> <p>4 I don't understand what you are</p> <p>5 asking me.</p> <p>6 Q. So you read that if an escrow</p> <p>7 agreement is reached and you are telling --</p> <p>8 what your testimony is that once that escrow</p> <p>9 agreement is agreed to the money moves</p> <p>10 automatically, right?</p> <p>11 A. It may direct that these funds be</p> <p>12 retained by our firm in such capacity.</p> <p>13 Q. But you are reading the first part</p> <p>14 of that sentence and this letter in whole to</p> <p>15 mean that upon entry into the escrow</p> <p>16 agreement that this money comes under the</p> <p>17 escrow agreement and is no longer recallable</p> <p>18 by AES?</p> <p>19 A. I think that becomes clear in the</p> <p>20 next sentence.</p> <p>21 Q. Is that the way you are reading</p> <p>22 this?</p> <p>23 A. Yes. The next sentence, yes.</p> <p>24 Q. Okay. So in your mind it says</p> <p>25 that if the escrow agreement is reached in</p>
<p style="text-align: right;">Page 122</p> <p>1 Wolfson</p> <p>2 to all parties can be reached our firm may</p> <p>3 act as the escrow agent.</p> <p>4 I don't understand what you are</p> <p>5 asking me except to keep reading the</p> <p>6 sentence.</p> <p>7 Q. I am asking you if I am correctly</p> <p>8 understanding what you just said before</p> <p>9 that, that you read this letter itself to</p> <p>10 authorize Mahoney & Keane to act as escrow</p> <p>11 agent under this other agreement of this</p> <p>12 money, that this is a self-executing letter?</p> <p>13 A. It is acknowledging the fact that</p> <p>14 under the escrow agreement once it is</p> <p>15 finalized we will be acting as the escrow</p> <p>16 agent. That is all it is saying.</p> <p>17 Q. So where it says in which case AES</p> <p>18 may direct that these funds be retained by</p> <p>19 Mahoney & Keane in such capacity, you are</p> <p>20 just writing that sentence, that portion of</p> <p>21 the sentence out of existence?</p> <p>22 A. I am not writing anything out.</p> <p>23 Q. Well, it has no meaning if it says</p> <p>24 in which case AES may direct?</p> <p>25 A. It means before that escrow</p>	<p style="text-align: right;">Page 124</p> <p>1 Wolfson</p> <p>2 which case AES may direct that these funds</p> <p>3 be retained by Mahoney & Keane in such</p> <p>4 capacity, that portion of the sentence has</p> <p>5 no significance to you?</p> <p>6 A. It is gearing up to the next</p> <p>7 sentence. You have to read it with the next</p> <p>8 sentence.</p> <p>9 Q. It says in no event shall any</p> <p>10 notification to Milestone or any discussions</p> <p>11 prior to reaching an acceptable agreement</p> <p>12 affect Mahoney & Keane's duty to return the</p> <p>13 500,000 to AES upon its written request?</p> <p>14 A. That's right. Prior to reaching</p> <p>15 an acceptable escrow agreement. The</p> <p>16 agreement that is being referred to is the</p> <p>17 escrow agreement.</p> <p>18 Any discussions prior to reaching</p> <p>19 an acceptable escrow agreement that up until</p> <p>20 that time we have to -- you have an absolute</p> <p>21 right to return the funds but it is only up</p> <p>22 until reaching an acceptable agreement. It</p> <p>23 says it right there.</p> <p>24 What other meaning do those words</p> <p>25 have I would ask you.</p>

<p style="text-align: right;">Page 125</p> <p>1 Wolfson</p> <p>2 Q. I am not being deposed,</p> <p>3 Mr. Wolfson.</p> <p>4 A. I know.</p> <p>5 Q. So you do take the position that</p> <p>6 in which case AES may direct these funds be</p> <p>7 retained by our firm in such capacity has no</p> <p>8 significance, where it says "may direct"?</p> <p>9 A. It has a lot of significance.</p> <p>10 Prior to reaching an acceptable escrow</p> <p>11 agreement.</p> <p>12 Q. That is not what that second</p> <p>13 sentence says. We understand if an escrow</p> <p>14 agreement acceptable to all parties can be</p> <p>15 reached our firm, Mahoney & Keane, may act</p> <p>16 as escrow agreement -- as escrow agent under</p> <p>17 such an agreement in which case AES may</p> <p>18 direct.</p> <p>19 So you are taking that sentence</p> <p>20 completely out of this letter?</p> <p>21 A. No. I am not. You are just</p> <p>22 arguing with me.</p> <p>23 Q. I am trying to understand how you</p> <p>24 have gotten to the interpretation you have</p> <p>25 adopted?</p>	<p style="text-align: right;">Page 127</p> <p>1 Wolfson</p> <p>2 at any time upon for whatever any</p> <p>3 reason.</p> <p>4 It is not -- it doesn't serve any</p> <p>5 commercial function. It defies all</p> <p>6 logic and I never heard an explanation</p> <p>7 as to why it should be interpreted this</p> <p>8 way even aside from the express language</p> <p>9 of prior to reaching an acceptable</p> <p>10 agreement.</p> <p>11 BY MR. WINTON:</p> <p>12 Q. Did it ever occur to you that</p> <p>13 perhaps AES did not want to lose control</p> <p>14 over its funds prior to them being</p> <p>15 secured -- prior to security being obtained</p> <p>16 for those funds?</p> <p>17 A. Did it ever occur to that you</p> <p>18 there are two sides to --</p> <p>19 Q. Just answer my question,</p> <p>20 Mr. Wolfson.</p> <p>21 A. That makes no sense to me.</p> <p>22 MR. KEANE: It doesn't matter. It</p> <p>23 is a simple question.</p> <p>24 THE WITNESS: There is no reason</p> <p>25 for the other side to enter into such</p>
<p style="text-align: right;">Page 126</p> <p>1 Wolfson</p> <p>2 A. Does my interpretation really</p> <p>3 matter? Why don't you depose Milestone.</p> <p>4 Why don't you ask your own client. This is</p> <p>5 my interpretation.</p> <p>6 Q. My client is going to be deposed</p> <p>7 so I am sure he will --</p> <p>8 A. This is my reading for what it is</p> <p>9 worth.</p> <p>10 Q. That is all I am trying to</p> <p>11 understand is how you got to where you got.</p> <p>12 MR. KEANE: Why don't you ask him</p> <p>13 that question? Put it on the record.</p> <p>14 THE WITNESS: It says, prior to</p> <p>15 reaching an acceptable agreement it</p> <p>16 specifically says that AES' ability to</p> <p>17 demand the return of funds, any</p> <p>18 discussions, anything, this whole</p> <p>19 agreement applies prior to reaching an</p> <p>20 acceptable agreement. That is what it</p> <p>21 says. Otherwise those words have no</p> <p>22 meaning. Otherwise the commercial</p> <p>23 context is silly. It makes no sense.</p> <p>24 Why would we be holding their</p> <p>25 money for no reason. They can demand it</p>	<p style="text-align: right;">Page 128</p> <p>1 Wolfson</p> <p>2 agreement.</p> <p>3 MR. KEANE: He didn't ask you</p> <p>4 that.</p> <p>5 THE WITNESS: I can understand why</p> <p>6 AES would want its money back. I cannot</p> <p>7 understand why AES would not want to</p> <p>8 post security. I can understand --</p> <p>9 BY MR. WINTON:</p> <p>10 Q. Why would AES post security for</p> <p>11 its own funds? Come on.</p> <p>12 MR. KEANE: Garth. Just look --</p> <p>13 THE WITNESS: That is not what I</p> <p>14 was suggesting.</p> <p>15 MR. KEANE: He asked you your</p> <p>16 understanding. You put it on the</p> <p>17 record. There is a new question. Did</p> <p>18 this concept come into your mind?</p> <p>19 THE WITNESS: What concept?</p> <p>20 BY MR. WINTON:</p> <p>21 Q. That AES might want to retain the</p> <p>22 right to recall its money until the loan,</p> <p>23 the \$500,000, is secured?</p> <p>24 MR. KEANE: A yes or no question.</p> <p>25</p>

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<p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. That is all we need. Yes or no.</p> <p>4 It did or didn't occur to you?</p> <p>5 A. I don't understand the question</p> <p>6 because --</p> <p>7 Q. You are saying --</p> <p>8 A. I had no knowledge of any loan to</p> <p>9 AES at the time. All I knew is what was in</p> <p>10 this letter agreement. Okay. That is what</p> <p>11 I knew. This was the agreement that I</p> <p>12 signed on to. It seemed to be pretty clear</p> <p>13 to me.</p> <p>14 Q. Okay. And you --</p> <p>15 A. But it also was something that --</p> <p>16 all right. Go on.</p> <p>17 MR. WINTON: Objection.</p> <p>18 Non-responsive.</p> <p>19 BY MR. WINTON:</p> <p>20 Q. You said that AES' explanation of</p> <p>21 what it intended makes no commercial sense.</p> <p>22 MR. KEANE: Let's have the</p> <p>23 question back?</p> <p>24 THE WITNESS: It makes no</p> <p>25 commercial sense.</p>	<p>1 Wolfson</p> <p>2 reading the contract that you drafted and I</p> <p>3 am telling you my --</p> <p>4 Q. I didn't draft anything.</p> <p>5 A. Your client drafted and I am</p> <p>6 telling you my interpretation of it.</p> <p>7 If the other side was okay with it</p> <p>8 and if AES was okay with it then I was okay</p> <p>9 with it. I was the escrow agent.</p> <p>10 If there is ambiguity there your</p> <p>11 client drafted it.</p> <p>12 Q. Don't you think as a fiduciary you</p> <p>13 should have checked to find out what the</p> <p>14 ambiguity was about?</p> <p>15 A. It didn't seem ambiguous to me at</p> <p>16 all.</p> <p>17 Q. So, in other words, your</p> <p>18 responsibilities as a fiduciary meant</p> <p>19 nothing to you?</p> <p>20 A. My responsibilities --</p> <p>21 Q. In terms of your responsibilities</p> <p>22 to AES.</p> <p>23 A. My responsibilities --</p> <p>24 MR. KEANE: Objection.</p> <p>25 THE WITNESS: -- as a fiduciary</p>
Page 130	Page 132
<p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. Stop. Now, my question is: Did</p> <p>4 it ever occur to you that what AES was doing</p> <p>5 in putting this money in trust in your hands</p> <p>6 with the right to recall it it was retaining</p> <p>7 the right to recall it because that money</p> <p>8 was not yet secured, there is no security</p> <p>9 for the loan yet?</p> <p>10 MR. KEANE: Did that occur to you,</p> <p>11 that is the question.</p> <p>12 THE WITNESS: It did not occur to</p> <p>13 me because it still makes no sense.</p> <p>14 MR. WINTON: Objection.</p> <p>15 Non-responsive.</p> <p>16 BY MR. WINTON:</p> <p>17 Q. Did AES at any point tell you that</p> <p>18 you were appointed to determine what made</p> <p>19 commercial sense for AES's putting money in</p> <p>20 trust in your hand?</p> <p>21 A. No. You are asking me now.</p> <p>22 Q. You are telling me that you</p> <p>23 decided what is going on here based on your</p> <p>24 interpretation.</p> <p>25 A. I didn't decide anything. I am</p>	<p>1 Wolfson</p> <p>2 was not to act as its counsel on how to</p> <p>3 draft an agreement.</p> <p>4 BY MR. WINTON:</p> <p>5 Q. But it was very much within your</p> <p>6 scope of work here to confirm with</p> <p>7 Mr. Seward on behalf of Milestone your</p> <p>8 firm's client what he intended --</p> <p>9 MS. OROZCO: Objection.</p> <p>10 BY MR. WINTON:</p> <p>11 Q. -- but not to go back to AES and</p> <p>12 find out what they intended. You just set</p> <p>13 yourself out to be the interpreter and the</p> <p>14 arbiter.</p> <p>15 MR. KEANE: You are getting</p> <p>16 argumentative now. Okay.</p> <p>17 THE WITNESS: He has been</p> <p>18 argumentative for a while.</p> <p>19 MR. KEANE: In fairness I think it</p> <p>20 has been a two-way street.</p> <p>21 You can't really argue with the</p> <p>22 witness. He has told you what he has</p> <p>23 told you and you have asked for his</p> <p>24 opinion on things that are really asking</p> <p>25 today what his construct of this</p>

<p style="text-align: right;">Page 133</p> <p>1 Wolfson</p> <p>2 agreement was.</p> <p>3 MR. WINTON: No. I am trying</p> <p>4 to -- I am responding to him shoving his</p> <p>5 opinion down my throat --</p> <p>6 THE WITNESS: Nonsense.</p> <p>7 MR. WINTON: -- in response to</p> <p>8 questions about what you did --</p> <p>9 THE WITNESS: Can we end the</p> <p>10 colloquy and just continue?</p> <p>11 MR. WINTON: Why don't you let</p> <p>12 your attorney handle the objections,</p> <p>13 Mr. Wolfson?</p> <p>14 THE WITNESS: You are speaking</p> <p>15 objections and I am an attorney too and</p> <p>16 you are wrong.</p> <p>17 MS. OROZCO: Can we take a</p> <p>18 two-minute break?</p> <p>19 MR. WINTON: Yes.</p> <p>20 (Recess)</p> <p>21 MR. WINTON: What was the last</p> <p>22 thing I said?</p> <p>23 THE WITNESS: You were challenging</p> <p>24 me about whether it was my fiduciary</p> <p>25 duty to have read the contract.</p>	<p style="text-align: right;">Page 135</p> <p>1 Wolfson</p> <p>2 A. Yes. I understood the charter</p> <p>3 party was finalized around the same time. I</p> <p>4 am not sure exactly.</p> <p>5 Q. What about the assignment of the</p> <p>6 security represented by the letter of</p> <p>7 credit?</p> <p>8 A. I don't know what happened with</p> <p>9 those assignments. I know Mark asked me</p> <p>10 something about the bank as I referred to</p> <p>11 before but -- really it seemed to me to be a</p> <p>12 separate issue from the escrow agreement.</p> <p>13 MR. WINTON: Number 15.</p> <p>14 (Two-page document of e-mail</p> <p>15 exchanges was marked Exhibit 15 for</p> <p>16 identification)</p> <p>17 BY MR. WINTON:</p> <p>18 Q. Exhibit 15, Exhibit 15 is a</p> <p>19 two-page document first page consisting of</p> <p>20 e-mail exchanges, the second one just a</p> <p>21 trailer from the bottom of the first page.</p> <p>22 A. Is there a question?</p> <p>23 Q. Not yet.</p> <p>24 In the middle e-mail you were</p> <p>25 telling Mr. Seward that your bank confirms</p>
<p style="text-align: right;">Page 134</p> <p>1 Wolfson</p> <p>2 MR. WINTON: Did I ask a question?</p> <p>3 MR. KEANE: Is there a question</p> <p>4 pending? That is what we want to know.</p> <p>5 THE WITNESS: Well, I started</p> <p>6 answering and then --</p> <p>7 (Record read)</p> <p>8 MR. WINTON: I withdraw the</p> <p>9 question, that one, and object as</p> <p>10 non-responsive whatever came after that</p> <p>11 from the witness.</p> <p>12 BY MR. WINTON:</p> <p>13 Q. Did you at the time during this</p> <p>14 December 1 through December 15 time frame,</p> <p>15 did you ever have an understanding of</p> <p>16 whether or not the escrow agreement was</p> <p>17 finalized?</p> <p>18 A. The escrow agreement was</p> <p>19 finalized. I believe it was finalized, if I</p> <p>20 am not mistaken December 2, maybe I am wrong</p> <p>21 about the date. It was very quickly</p> <p>22 finalized.</p> <p>23 Q. Did you ever have an understanding</p> <p>24 of whether or not the charter party was</p> <p>25 finalized?</p>	<p style="text-align: right;">Page 136</p> <p>1 Wolfson</p> <p>2 receipt of the 500,000?</p> <p>3 A. Yes.</p> <p>4 Q. Then Mr. Seward at 12:38 on the</p> <p>5 second, I assume this is New York time, is</p> <p>6 saying that he hopes to have the escrow to</p> <p>7 you to look at soon?</p> <p>8 A. Sure. That is what it says.</p> <p>9 MR. WINTON: Number 16.</p> <p>10 (Single page document Bates</p> <p>11 numbered M&K040 was marked Exhibit 16 for</p> <p>12 identification)</p> <p>13 BY MR. WINTON:</p> <p>14 Q. Exhibit 16 is a single page with</p> <p>15 two different e-mails on it.</p> <p>16 Do you see that?</p> <p>17 A. Yes. Exhibit 16 has several</p> <p>18 pages, has the coverage e-mail and then some</p> <p>19 attachments, I think, right. So the total</p> <p>20 Exhibit is five pages.</p> <p>21 Q. I think Exhibit 16 should consist</p> <p>22 of M&K040 only.</p> <p>23 A. No.</p> <p>24 MS. OROZCO: No. Mine is stapled.</p> <p>25 It is this. It is all stapled together.</p>

<p style="text-align: right;">Page 137</p> <p>1 Wolfson</p> <p>2 MR. WINTON: I think that is</p> <p>3 incorrect. I think that first one --</p> <p>4 BY MR. WINTON:</p> <p>5 Q. Well, Mr. Wolfson, would you look</p> <p>6 at it?</p> <p>7 I assume that that first page is a</p> <p>8 separate e-mail string from the next couple</p> <p>9 of pages and they should not have been</p> <p>10 stapled. Would you agree?</p> <p>11 The first one is page 1 of 1 and</p> <p>12 the second one is enclosing a copy of an</p> <p>13 escrow agreement.</p> <p>14 A. Yes. I think that is right.</p> <p>15 Q. So if you would let me separate</p> <p>16 those so we don't create anymore confusion</p> <p>17 than necessary.</p> <p>18 Exhibit 16 is now a single page</p> <p>19 consisting of M&K040?</p> <p>20 A. Yes.</p> <p>21 Q. Who, at the bottom e-mail Denise</p> <p>22 Amspoker, do you know who she is?</p> <p>23 A. I guess Estech must have been</p> <p>24 provided with my e-mail and they sent it to</p> <p>25 me because it looks like it is signed off by</p>	<p style="text-align: right;">Page 139</p> <p>1 Wolfson</p> <p>2 This is a retransmission of the</p> <p>3 escrow agreement because for some reason you</p> <p>4 weren't able to open the prior one?</p> <p>5 A. It was in some primitive DOS</p> <p>6 format that no one could open.</p> <p>7 Q. That would be, yes?</p> <p>8 A. Yes.</p> <p>9 MS. OROZCO: Exactly.</p> <p>10 MR. WINTON: Number 18.</p> <p>11 (Document Bates labeled M&K49</p> <p>12 through 52 was marked Exhibit 18 for</p> <p>13 identification)</p> <p>14 BY MR. WINTON:</p> <p>15 Q. Exhibit 18 is Bates labeled M&K49</p> <p>16 through 52. It is an e-mail with an</p> <p>17 attachment of the escrow agreement, correct?</p> <p>18 A. Yes.</p> <p>19 Q. The only change really in terms of</p> <p>20 the escrow agreement is you have now signed</p> <p>21 it on behalf of Mahoney & Keane?</p> <p>22 A. Yes. So presumably at some point</p> <p>23 Mark, he may have -- that may have been at</p> <p>24 the time that he called me, unless it is</p> <p>25 reflected in any of the other e-mail, he</p>
<p style="text-align: right;">Page 138</p> <p>1 Wolfson</p> <p>2 Dan which I suppose is Dan Slane.</p> <p>3 Q. Who is not actually with Estech?</p> <p>4 A. I have no idea. This is from --</p> <p>5 Q. You associated him with Estech at</p> <p>6 least at that time, fair statement?</p> <p>7 A. Fair statement.</p> <p>8 Q. Do you have an understanding of</p> <p>9 why he was sending that document to you?</p> <p>10 A. My understanding is that he needed</p> <p>11 to have the escrow agreement signed so that</p> <p>12 the fixture could be reached and the cargo</p> <p>13 could be carried.</p> <p>14 Q. The charter party, correct?</p> <p>15 A. Correct.</p> <p>16 MR. WINTON: Number 17.</p> <p>17 (Single page e-mail with</p> <p>18 attachment document labeled "Escrow</p> <p>19 Agreement" was marked Exhibit 17 for</p> <p>20 identification)</p> <p>21 BY MR. WINTON:</p> <p>22 Q. Exhibit 17 is a single page e-mail</p> <p>23 with an attached document labeled "2nd of</p> <p>24 December 2010" and labeled "Escrow</p> <p>25 Agreement."</p>	<p style="text-align: right;">Page 140</p> <p>1 Wolfson</p> <p>2 told me to go ahead and do it.</p> <p>3 Q. So, yes, the attachment is simply</p> <p>4 the same escrow agreement that you have now</p> <p>5 signed?</p> <p>6 A. Yes.</p> <p>7 Q. The e-mail at the bottom of the</p> <p>8 first page is a repeat of the one before</p> <p>9 where it is being retransmitted to you in a</p> <p>10 different format.</p> <p>11 Right above that is from you to</p> <p>12 Denise Amspoker where you are saying,</p> <p>13 thanks, Dan, Dan Slane, right?</p> <p>14 A. Yes.</p> <p>15 Q. Signed in, subject to agreement</p> <p>16 and --</p> <p>17 A. Right.</p> <p>18 Q. -- you are forwarding this subject</p> <p>19 to agreement on final CP terms which means</p> <p>20 charter party terms, correct?</p> <p>21 A. Right.</p> <p>22 Q. You indicated the day before that</p> <p>23 it was your understanding that Tom Moloney</p> <p>24 was counsel for the charterers but you are</p> <p>25 not copying him with this document?</p>

<p style="text-align: right;">Page 141</p> <p>1 Wolfson</p> <p>2 A. No. As I explained before, that</p> <p>3 was based on the call from him, I had no</p> <p>4 idea about AES' involvement at all and when</p> <p>5 I got the proposed letter it was from AES</p> <p>6 and it was only at that point that I</p> <p>7 understood that AES was a different entity.</p> <p>8 Q. Was there a reason you did not</p> <p>9 copy Mr. Moloney on this document once you</p> <p>10 executed it?</p> <p>11 A. I was supposed to forward it to</p> <p>12 the people signing it. So he wasn't signing</p> <p>13 it, so, no, I didn't forward it to him</p> <p>14 because it wasn't for his signature.</p> <p>15 Q. It was your understanding that</p> <p>16 upon execution of this document that would</p> <p>17 impact the \$500,000 that had been wired to</p> <p>18 you by AES?</p> <p>19 A. Yes, but I didn't view it as an</p> <p>20 anything I should do to send it to him.</p> <p>21 It didn't see any reason to send</p> <p>22 it to him.</p> <p>23 Q. Then --</p> <p>24 A. I had spoken to Mark and he had</p> <p>25 directed me to send it on to get everyone to</p>	<p style="text-align: right;">Page 143</p> <p>1 Wolfson</p> <p>2 this.</p> <p>3 MR. WINTON: Objection.</p> <p>4 Non-responsive.</p> <p>5 BY MR. WINTON:</p> <p>6 Q. I am just trying to get through</p> <p>7 these, Mr. Wolfson. You keep wanting to go</p> <p>8 back in circles.</p> <p>9 A. Ask a right question, you will get</p> <p>10 a right answer.</p> <p>11 MR. WINTON: Number 19.</p> <p>12 (Two-page exhibit Bates labeled</p> <p>13 M&K58 and 59 was marked Exhibit 19 for</p> <p>14 identification)</p> <p>15 BY MR. WINTON:</p> <p>16 Q. This is a two-page exhibit M&K58</p> <p>17 and 59 indicating that you are forwarding</p> <p>18 the escrow agreement Mr. Seward?</p> <p>19 A. Yes.</p> <p>20 Q. There is no indication that there</p> <p>21 is an attachment to this one however. Would</p> <p>22 you agree?</p> <p>23 A. No -- yes, I would agree. No</p> <p>24 attachment.</p> <p>25 Q. Mr. Seward is telling you in his</p>
<p style="text-align: right;">Page 142</p> <p>1 Wolfson</p> <p>2 sign it who needed to sign it.</p> <p>3 Q. So you forwarded it for execution</p> <p>4 but despite the fact that it was your</p> <p>5 understanding that the execution of this</p> <p>6 document would impact AES's money you didn't</p> <p>7 send it to AES to keep them in the loop on</p> <p>8 what was going on?</p> <p>9 A. I didn't send it to AES but I</p> <p>10 think they were in the loop. They certainly</p> <p>11 must have understood what was going on.</p> <p>12 You asked the question that way.</p> <p>13 I have to answer it that way.</p> <p>14 MR. WINTON: Objection.</p> <p>15 Non-responsive.</p> <p>16 BY MR. WINTON:</p> <p>17 Q. You did not send it to them?</p> <p>18 A. I did not send it to them.</p> <p>19 Q. So you did not take action</p> <p>20 individually to keep them in the loop?</p> <p>21 A. No.</p> <p>22 Q. You made an assumption?</p> <p>23 A. I didn't make any assumption.</p> <p>24 They are letter references in the</p> <p>25 escrow agreement. You keep going back to</p>	<p style="text-align: right;">Page 144</p> <p>1 Wolfson</p> <p>2 response at the top of Exhibit 19, "Fine for</p> <p>3 us, please sign and send to them." Them</p> <p>4 being who, did you have an understanding</p> <p>5 of --</p> <p>6 A. It would be in my next e-mail who</p> <p>7 I sent it to, probably sent to Estech, I</p> <p>8 would assume.</p> <p>9 Q. I wonder if these are out of</p> <p>10 sequence.</p> <p>11 A. Might be.</p> <p>12 Q. Because the Exhibit 18 we looked</p> <p>13 at has the one where you are forwarding it</p> <p>14 to Mr. Slane and you say, "Subject to</p> <p>15 agreement on final charter party terms,"</p> <p>16 which is what Mr. Seward is telling you to</p> <p>17 do here.</p> <p>18 A. That's right.</p> <p>19 Q. So this may be one of those</p> <p>20 instances where the computers are tricking</p> <p>21 us on the times.</p> <p>22 A. I don't see how it matters.</p> <p>23 MS. OROZCO: Look -- off the</p> <p>24 record.</p> <p>25 (Discussion off the record)</p>

<p style="text-align: right;">Page 145</p> <p>1 Wolfson</p> <p>2 THE WITNESS: He was directing me</p> <p>3 to return it to this Dan Slane.</p> <p>4 BY MR. WINTON:</p> <p>5 Q. So when you say "Dan Slane," you</p> <p>6 are indicating that at the top of 19 when it</p> <p>7 says send to them that is Mr. Slane?</p> <p>8 A. Yes. In fact you can see that</p> <p>9 e-mail to him in -- which followed Exhibit</p> <p>10 19.</p> <p>11 Q. It is actually in 18?</p> <p>12 A. In 18.</p> <p>13 Q. Yes. That is sort of what I was</p> <p>14 sorting out in my mind. I just wanted to</p> <p>15 make sure I was reading it correctly.</p> <p>16 So as of this moment in time was</p> <p>17 it your understanding that the charter party</p> <p>18 was still needing to be finalized?</p> <p>19 A. Yes.</p> <p>20 MR. WINTON: Number 20.</p> <p>21 (Document Bates labeled M&K60 to</p> <p>22 63 was marked Exhibit 20 for identification)</p> <p>23 BY MR. WINTON:</p> <p>24 Q. We have marked as Exhibit 20 M&K60</p> <p>25 to 63 which is another copy of the escrow</p>	<p style="text-align: right;">Page 147</p> <p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. Exhibit 21 is a series of e-mails</p> <p>4 that I think fit in the sequence of Exhibit</p> <p>5 20.</p> <p>6 It may be something that you</p> <p>7 referred to that you were forwarding these</p> <p>8 escrow agreement variations on to Mr. Seward</p> <p>9 to make sure he was approving the changes,</p> <p>10 correct?</p> <p>11 A. Yes. You can see in the e-mail</p> <p>12 before you asked -- you inquired earlier</p> <p>13 about me corresponding directly with</p> <p>14 Milestone or their agent, as you can see I</p> <p>15 did so in forwarding the draft of the</p> <p>16 escrow.</p> <p>17 Q. That is here, it says chartering</p> <p>18 at Chaika Agency, C-H-A-I-K-A, agency?</p> <p>19 A. That is the e-mail address I had</p> <p>20 for them.</p> <p>21 Q. Right.</p> <p>22 A. They may have just been brokers.</p> <p>23 Q. I think as we have discussed</p> <p>24 previously and so we don't have to go</p> <p>25 through it on all of these e-mails you were</p>
<p style="text-align: right;">Page 146</p> <p>1 Wolfson</p> <p>2 agreement. Apparently the escrow agreement</p> <p>3 was changed to reflect the change in the</p> <p>4 LAYCAN days. Lay time cancellation is what</p> <p>5 LAYCAN stands for.</p> <p>6 So you are reexecuting this</p> <p>7 document and forwarding it on to Mr. Slane,</p> <p>8 right?</p> <p>9 A. I believe there was -- yes, there</p> <p>10 was some communication with -- again, I am</p> <p>11 going back to Mark about it just to make</p> <p>12 sure that was correct before I signed and</p> <p>13 forwarded it back to Mr. Slane. Never acted</p> <p>14 unilaterally on something like that. I got</p> <p>15 instructions.</p> <p>16 Q. But you weren't in the loop of</p> <p>17 negotiating?</p> <p>18 A. I was completely out of the loop</p> <p>19 in any of these negotiations.</p> <p>20 My role was to interpret that</p> <p>21 letter agreement and the escrow agreement.</p> <p>22 MR. WINTON: Number 21.</p> <p>23 (Series of e-mails was marked</p> <p>24 Exhibit 21 for identification)</p> <p>25</p>	<p style="text-align: right;">Page 148</p> <p>1 Wolfson</p> <p>2 circulating these among Milestone, Seward,</p> <p>3 Slane, none of them going to Moloney or AES?</p> <p>4 A. None went to AES.</p> <p>5 MR. WINTON: Number 22.</p> <p>6 (Document Bates labeled 69 and 70</p> <p>7 was marked Exhibit 22 for identification)</p> <p>8 MR. WINTON: Number 69 and 70,</p> <p>9 Bates.</p> <p>10 BY MR. WINTON:</p> <p>11 Q. This is Exhibit 22. And we are</p> <p>12 still on December 2 fortunately running out</p> <p>13 of daylight?</p> <p>14 A. Yes.</p> <p>15 Q. This is a series of e-mails. The</p> <p>16 bottom one from Mr. Slane to law offices at</p> <p>17 Mahoney & Keane but he is actually writing</p> <p>18 to you?</p> <p>19 A. Yes.</p> <p>20 Q. Talking about the change in the</p> <p>21 LAYCAN date or the range of dates.</p> <p>22 The middle e-mail says -- is from</p> <p>23 you to Mr. Seward, "Mark, seems negotiations</p> <p>24 are ongoing. Shall I sign and distribute</p> <p>25 again?" But I don't see any indication</p>

<p style="text-align: right;">Page 149</p> <p>1 Wolfson</p> <p>2 there is anything attached.</p> <p>3 A. It is a forward so the attachment</p> <p>4 was forwarded to Mark Seward.</p> <p>5 Q. A forward would still show the</p> <p>6 document attached though.</p> <p>7 A. It may well be that, and you have</p> <p>8 a copy of it from the earlier e-mail so it</p> <p>9 may well be that I didn't print out the</p> <p>10 attachment again but it is the same e-mail</p> <p>11 that is forwarded.</p> <p>12 Q. Apparently this bottom one is --</p> <p>13 it is from the Slane company with Dan</p> <p>14 Slane's e-mail address but it says Jan</p> <p>15 Michalek at the bottom?</p> <p>16 A. Yes. You are right.</p> <p>17 Q. So this is one of the few times</p> <p>18 that you and he communicated directly?</p> <p>19 A. I guess so. It is what it is.</p> <p>20 Q. At the top you have Mr. Seward</p> <p>21 coming back to you saying please, means,</p> <p>22 please go ahead and sign and distribute, is</p> <p>23 that your recollection?</p> <p>24 A. Yes.</p> <p>25 Q. Of what you understood that to</p>	<p style="text-align: right;">Page 151</p> <p>1 Wolfson</p> <p>2 assignment of proceeds to Milestone and this</p> <p>3 is the document you were working with</p> <p>4 Mr. Seward on or discussing with Mr. Seward</p> <p>5 whether or not multiple assignments are</p> <p>6 enforceable?</p> <p>7 A. This is the whole assignment</p> <p>8 business. As I recall this was just an</p> <p>9 inquiry he raised sometime in mid December.</p> <p>10 We now know -- well, this is -- it</p> <p>11 looks like this e-mail may have been an</p> <p>12 attachment to an e-mail which he</p> <p>13 subsequently sent to me on the 15th.</p> <p>14 Q. It looks like what happened here</p> <p>15 is we have a series of e-mails that</p> <p>16 ultimately, yes, come to you and it is not</p> <p>17 clear how.</p> <p>18 A. I think it was he has these</p> <p>19 attachments so I think this probably came as</p> <p>20 an attachment.</p> <p>21 Hold on a second. Let me see if I</p> <p>22 have it stapled properly.</p> <p>23 Yes. If you see it may well be I</p> <p>24 just printed it out as I could. I just</p> <p>25 wanted to make sure everything was copied.</p>
<p style="text-align: right;">Page 150</p> <p>1 Wolfson</p> <p>2 mean?</p> <p>3 A. Yes.</p> <p>4 Q. And then you and he would talk the</p> <p>5 following day about how much you were going</p> <p>6 to charge for your services?</p> <p>7 A. Well, to be fair there is some</p> <p>8 exclamation points. I think he was making a</p> <p>9 joke about how much our days had been</p> <p>10 drained by this one matter and ultimately we</p> <p>11 both charged very little, less than you</p> <p>12 charged, that's for sure.</p> <p>13 Q. I work for free.</p> <p>14 MR. WINTON: Number 23.</p> <p>15 (Document Bates labeled M&K71, 72,</p> <p>16 73 was marked Exhibit 23 for identification)</p> <p>17 BY MR. WINTON:</p> <p>18 Q. We have now Exhibit 23 which is</p> <p>19 M&K71, 72, 73, a series of e-mails and</p> <p>20 finally we made some progress on the date.</p> <p>21 This is now December 7?</p> <p>22 A. Yes.</p> <p>23 Q. And here, Beverly Unger,</p> <p>24 U-N-G-E-R, at U.S. Bank is forwarding to JKM</p> <p>25 at Estech and a bunch of other people an</p>	<p style="text-align: right;">Page 152</p> <p>1 Wolfson</p> <p>2 But if you see there is an e-mail</p> <p>3 dated December 14 and it is entirely</p> <p>4 possible this was an attachment because he</p> <p>5 says in that e-mail attached -- he has</p> <p>6 attached a copy of the assignment and a copy</p> <p>7 of the confirmation of the assignment,</p> <p>8 confirmation from the bank. I also attach a</p> <p>9 copy of the bank's e-mail below.</p> <p>10 So maybe this came in connection</p> <p>11 with that but this would have made no sense</p> <p>12 to me if I received it as early as the 7th.</p> <p>13 Q. Okay. So your best recollection</p> <p>14 is --</p> <p>15 A. It came the 14th.</p> <p>16 Q. -- Exhibit 23 was attached to what</p> <p>17 we are going to mark as Exhibit 24?</p> <p>18 A. Yes. And I think as I looked at</p> <p>19 my time, my billing before I think I came to</p> <p>20 the same conclusion then. I think I noted</p> <p>21 my time on this starting on 12/15 so I</p> <p>22 definitely did not receive it on December 7.</p> <p>23 Q. Okay.</p> <p>24 MR. WINTON: Number 24.</p> <p>25 (Document Bates labeled M&K75, 76,</p>

<p style="text-align: right;">Page 153</p> <p>1 Wolfson</p> <p>2 77, 78 was marked Exhibit 24 for</p> <p>3 identification)</p> <p>4 BY MR. WINTON:</p> <p>5 Q. Exhibit 24 is M&K75, 76, 77, 78,</p> <p>6 correct?</p> <p>7 A. Yes, it is.</p> <p>8 Q. This I believe you alluded to</p> <p>9 earlier --</p> <p>10 A. Yes.</p> <p>11 Q. -- where Mr. Seward is asking you</p> <p>12 for information about this bank and the</p> <p>13 assignment and this is really continuing</p> <p>14 with some questions he posed to you back on</p> <p>15 the 1st about these multiple assignments of</p> <p>16 this letter of credit?</p> <p>17 A. Yes and no. I mean it is still</p> <p>18 dealing with the letters of credit and the</p> <p>19 assignments but it is a discrete inquiry.</p> <p>20 Q. Discrete in the sense that he is</p> <p>21 asking you if this is a legitimate bank?</p> <p>22 A. Yes. It is not so much a legal</p> <p>23 issue as much as, you know, do I have any</p> <p>24 knowledge of this bank or what I think of</p> <p>25 it.</p>	<p style="text-align: right;">Page 155</p> <p>1 Wolfson</p> <p>2 There were instances when I was</p> <p>3 told to circulate a draft but that doesn't</p> <p>4 necessarily mean I was the one circulating</p> <p>5 all the e-mail communications.</p> <p>6 I was not the central</p> <p>7 communications hub by any measure. So all</p> <p>8 that stuff would have been between the</p> <p>9 parties themselves without my involvement, I</p> <p>10 assume.</p> <p>11 Q. So when is it your understanding</p> <p>12 that the escrow agreement was actually</p> <p>13 finally executed by all parties or is that</p> <p>14 something that happened without your</p> <p>15 knowledge?</p> <p>16 A. I can only go by what was in the</p> <p>17 e-mail but I know after I signed it and sent</p> <p>18 it on I presumed that it was signed in short</p> <p>19 order, right around December 2.</p> <p>20 Q. But you do not know?</p> <p>21 A. Right. I don't know unless it is</p> <p>22 reflected in the e-mails some place. I</p> <p>23 can't remember.</p> <p>24 Q. I don't recall seeing an e-mail</p> <p>25 saying, Mr. Wolfson, here is a copy of the</p>
<p style="text-align: right;">Page 154</p> <p>1 Wolfson</p> <p>2 Q. Do you know anything about U.S.</p> <p>3 Bank?</p> <p>4 A. No. I think he was just asking me</p> <p>5 because I was American not because -- for</p> <p>6 any other reason.</p> <p>7 Q. Did you have an understanding as</p> <p>8 of December 14 whether or not the charter</p> <p>9 party had been finalized and existed as of</p> <p>10 this point in time?</p> <p>11 A. I mean I don't specifically recall</p> <p>12 but I know the escrow agreement was</p> <p>13 finalized so I would -- maybe I was assuming</p> <p>14 but I certainly understood it to have been</p> <p>15 concluded when the escrow agreement was</p> <p>16 completed.</p> <p>17 Q. We have not seen a fully executed</p> <p>18 version of the escrow agreement in any of</p> <p>19 these e-mails up to this point, right?</p> <p>20 A. That may be true.</p> <p>21 I also wasn't the central</p> <p>22 depository and supplier of all the e-mails</p> <p>23 that was going on. Like I said all the</p> <p>24 negotiations were going on between the</p> <p>25 parties without my involvement.</p>	<p style="text-align: right;">Page 156</p> <p>1 Wolfson</p> <p>2 fully executed escrow agreement for your</p> <p>3 file or anything like that.</p> <p>4 A. No, but, you know, it was signed</p> <p>5 by Estech, right? And I signed it and the</p> <p>6 only other party was Seward's people who</p> <p>7 were treating it as if it was done so, you</p> <p>8 know.</p> <p>9 Q. As an escrow agent would you not</p> <p>10 have expected to receive a fully executed</p> <p>11 copy upon completion of the document?</p> <p>12 A. Yes. But it is not uncommon that</p> <p>13 I don't necessarily have a signed copy. If</p> <p>14 Mark Seward tells me that it is done, you</p> <p>15 know I have no reason not to believe him.</p> <p>16 Milestone was his client.</p> <p>17 Q. But wouldn't you normally expect</p> <p>18 as the escrow agent to have a copy of the</p> <p>19 final executed document?</p> <p>20 A. Yes. In any circumstances it is</p> <p>21 nice to have final executed copy of any</p> <p>22 agreement but as -- you know, in my business</p> <p>23 it is not uncommon that sometimes you don't</p> <p>24 necessarily get the final executed copy of</p> <p>25 anything.</p>

<p style="text-align: right;">Page 157</p> <p>1 Wolfson</p> <p>2 Since I know that the party who</p> <p>3 was my own clients in other words that the</p> <p>4 people I was working for was the escrow</p> <p>5 agency, Estech I know signed it and</p> <p>6 Milestone and I was reporting to daily so</p> <p>7 there was no reason to think it wasn't fully</p> <p>8 signed.</p> <p>9 Q. But you do not have a --</p> <p>10 A. I don't have a copy but that</p> <p>11 doesn't mean I have no understanding as to</p> <p>12 whether it was executed.</p> <p>13 Q. And you don't know in fact when it</p> <p>14 was finally executed?</p> <p>15 A. I can't say with absolute</p> <p>16 precision but I think it was around</p> <p>17 December 2nd because the fixture wouldn't</p> <p>18 have been done without it. It was part of</p> <p>19 the fixture.</p> <p>20 Q. So the answer is no, you do not</p> <p>21 know?</p> <p>22 A. I do not know.</p> <p>23 Q. Do you have an understanding of --</p> <p>24 when you say "fixture" I think we agreed</p> <p>25 that you mean the charter party?</p>	<p style="text-align: right;">Page 159</p> <p>1 Wolfson</p> <p>2 the charter party.</p> <p>3 Q. It is not executed is the problem.</p> <p>4 That is why I am asking.</p> <p>5 A. As you know with fixtures it is</p> <p>6 not uncommon that they are not executed.</p> <p>7 They are not signed that is often the case.</p> <p>8 Q. And that is why I am asking the</p> <p>9 question.</p> <p>10 A. No. I wouldn't be the person to</p> <p>11 ask.</p> <p>12 Q. Okay.</p> <p>13 A. No one ever certainly came to me</p> <p>14 and said, you know, the fixture is done, the</p> <p>15 escrow agreement is done, do anything.</p> <p>16 Funds just sat there.</p> <p>17 MR. WINTON: Number 25.</p> <p>18 (Four-page document Bates labeled</p> <p>19 M&K83 to 86 was marked Exhibit 25 for</p> <p>20 identification)</p> <p>21 MR. WINTON: Objection.</p> <p>22 Non-responsive.</p> <p>23 BY MR. WINTON:</p> <p>24 Q. We have handed you what has been</p> <p>25 marked as Exhibit 25. This is a four-page</p>
<p style="text-align: right;">Page 158</p> <p>1 Wolfson</p> <p>2 A. Yes.</p> <p>3 Q. Do you have an understanding of</p> <p>4 when the charter party was finally executed,</p> <p>5 if at all?</p> <p>6 A. My understanding is it was</p> <p>7 executed. I would have to have my head in</p> <p>8 the sand as far as the other documents that</p> <p>9 have been placed in front of me not to have</p> <p>10 that understanding.</p> <p>11 Q. And what do you base that</p> <p>12 understanding on?</p> <p>13 A. The fact there is a lawsuit, the</p> <p>14 fact that I -- that Milestone demanded the</p> <p>15 return of the funds and alleged the breach.</p> <p>16 All of that. It is all in my head and kind</p> <p>17 of hard to answer the question without</p> <p>18 having that in my head.</p> <p>19 Q. Do you have an understanding of</p> <p>20 when the charter party came into existence?</p> <p>21 A. I would have to refer to</p> <p>22 Milestone's pleadings because They would</p> <p>23 know exactly.</p> <p>24 Q. I don't think they say.</p> <p>25 A. I think they produced a copy of</p>	<p style="text-align: right;">Page 160</p> <p>1 Wolfson</p> <p>2 document M&K83 to 86?</p> <p>3 A. Yes.</p> <p>4 Q. Again this is -- contains a series</p> <p>5 of discussions between you and Mr. Seward</p> <p>6 regarding U.S. Bank and the assignment?</p> <p>7 A. I wouldn't say it is a series of</p> <p>8 discussions. It is really one discussion.</p> <p>9 Q. I would say it is a series of</p> <p>10 e-mails discussing the assignment?</p> <p>11 A. Yes.</p> <p>12 Q. It ends with him asking you how</p> <p>13 much you were going to charge for your work</p> <p>14 in this matter and you indicated about</p> <p>15 2,000?</p> <p>16 A. Yes.</p> <p>17 MR. WINTON: Number 26.</p> <p>18 (Document Bates labeled M&K87</p> <p>19 through 107 was marked Exhibit 26 for</p> <p>20 identification)</p> <p>21 BY MR. WINTON:</p> <p>22 Q. Exhibit 26 is a lengthy document</p> <p>23 that is composed of M&K87 through 107.</p> <p>24 Do you agree?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 161</p> <p>1 Wolfson</p> <p>2 Q. Basically this is on the first</p> <p>3 page contains two e-mails and then a series</p> <p>4 of documents that are attached.</p> <p>5 Would you agree that the first</p> <p>6 e-mail, the lower one is dated December 23</p> <p>7 of 2010 and is Mr. Seward letting you know</p> <p>8 that the arrangements between and here he</p> <p>9 says Slane Corporation, Estech and Milestone</p> <p>10 apparently have come apart. I won't quote</p> <p>11 it.</p> <p>12 He is asking you for advice about</p> <p>13 whether or not there is any sort of</p> <p>14 garnishee procedure available to Milestone.</p> <p>15 Do you see that second to the</p> <p>16 bottom full line?</p> <p>17 "What do you think we can do? Is</p> <p>18 there any kind of garnishee procedure</p> <p>19 available to us?" And then asking you what</p> <p>20 you need in order to release the escrow?</p> <p>21 A. Yes. I see where he says that,</p> <p>22 yes. As I recall I did not respond to that.</p> <p>23 Q. I guess this is really only a</p> <p>24 single e-mail, isn't it, and it -- the</p> <p>25 format is what was confusing me. It looks</p>	<p style="text-align: right;">Page 163</p> <p>1 Wolfson</p> <p>2 office was closed?</p> <p>3 A. I was gone. Our office definitely</p> <p>4 closes around that time. It would have been</p> <p>5 right before the Christmas holidays so I</p> <p>6 suspect the office was closed. I actually</p> <p>7 was gone earlier than that. I was abroad</p> <p>8 and in fact despite advices received from</p> <p>9 Messrs. Verizon & Company my BlackBerry did</p> <p>10 not function in Argentina so I was without</p> <p>11 BlackBerry in fact for -- well, it was</p> <p>12 supposed to have been just a week but</p> <p>13 because of the snowstorm turned longer than</p> <p>14 that. But the office would have been closed</p> <p>15 that afternoon anyway. It almost certainly</p> <p>16 would have closed that day early.</p> <p>17 Q. This e-mail --</p> <p>18 A. I did not even see it for some</p> <p>19 time.</p> <p>20 Q. This e-mail is dated December 23</p> <p>21 at 3:18 p.m.?</p> <p>22 MS. OROZCO: December 23rd?</p> <p>23 MR. WINTON: What did I say?</p> <p>24 MS. OROZCO: You said the 23rd.</p> <p>25 Mine is the 29th.</p>
<p style="text-align: right;">Page 162</p> <p>1 Wolfson</p> <p>2 like he has almost used a memo format under</p> <p>3 the e-mail that is at the top there?</p> <p>4 A. Yes.</p> <p>5 Q. Would you agree with that?</p> <p>6 A. Yes.</p> <p>7 MR. WINTON: Number 27.</p> <p>8 (Document Bates labeled M&K108 and</p> <p>9 109 was marked Exhibit 27 for</p> <p>10 identification)</p> <p>11 BY MR. WINTON:</p> <p>12 Q. Exhibit 27 is M&K108 and 109.</p> <p>13 Really just a single e-mail on the top of</p> <p>14 the one we just looked at but now without</p> <p>15 any of the attachments.</p> <p>16 This one basically just says</p> <p>17 Garth, help, exclamation mark, exclamation</p> <p>18 mark, question mark, right?</p> <p>19 A. Yes.</p> <p>20 Q. So this is just a followup telling</p> <p>21 you that he is looking for an answer to his</p> <p>22 prior inquiry, right?</p> <p>23 A. Yes.</p> <p>24 Q. My understanding is that on</p> <p>25 December 23 when these e-mails came in your</p>	<p style="text-align: right;">Page 164</p> <p>1 Wolfson</p> <p>2 MR. WINTON: M&K108.</p> <p>3 MS. OROZCO: Sorry.</p> <p>4 BY MR. WINTON:</p> <p>5 Q. It indicates 3:18 p.m. so --</p> <p>6 A. I would be very, very surprised if</p> <p>7 the office were open.</p> <p>8 I could probably catch Ed and</p> <p>9 confirm but we would have almost certainly</p> <p>10 closed at least early that day. We would</p> <p>11 have been closed on the 24th, the Friday</p> <p>12 when Christmas day was celebrated and almost</p> <p>13 certainly I have been here 14 years now and</p> <p>14 we have been closed that day for those</p> <p>15 holidays.</p> <p>16 Q. When you were closed -- when your</p> <p>17 offices are closed for the holiday is there</p> <p>18 anyone monitoring e-mails?</p> <p>19 A. Normally I should get the e-mail</p> <p>20 on my BlackBerry but as I said it wasn't</p> <p>21 working so Ed may have received it.</p> <p>22 We both have mobile devices that</p> <p>23 are capable of receiving e-mail and I am not</p> <p>24 sure whether Ed received this since it was</p> <p>25 addressed to me but it is entirely possible</p>

<p style="text-align: right;">Page 165</p> <p>1 Wolfson</p> <p>2 he did.</p> <p>3 Q. When you travel like that you do</p> <p>4 normally take a laptop so that you can go</p> <p>5 online and check e-mails?</p> <p>6 A. I didn't bring a laptop because I</p> <p>7 was going into the Andes and it would have</p> <p>8 been hard to carry a laptop.</p> <p>9 I did bring the Verizon special</p> <p>10 World Edition BlackBerry with me and, which</p> <p>11 I was assured would work and in fact it did</p> <p>12 not at all and I managed to get word to the</p> <p>13 office that I was not receiving e-mail but</p> <p>14 aside from that --</p> <p>15 Q. When did you let the office know</p> <p>16 you were not receiving e-mail?</p> <p>17 A. My wife's BlackBerry worked and</p> <p>18 she -- I used her BlackBerry to e-mail the</p> <p>19 office and said this is Garth in all caps so</p> <p>20 they wouldn't delete the e-mail and just let</p> <p>21 them know that I was not receiving</p> <p>22 BlackBerry.</p> <p>23 Q. Do you recall when you did that?</p> <p>24 A. It would have been probably the</p> <p>25 very day I arrived which would have been</p>	<p style="text-align: right;">Page 167</p> <p>1 Wolfson</p> <p>2 MS. OROZCO: It is the Monday</p> <p>3 after Christmas.</p> <p>4 THE WITNESS: And it was that</p> <p>5 storm, in fact, the subways weren't</p> <p>6 running, nothing was running. There was</p> <p>7 nobody in any of these offices, even</p> <p>8 large corporations.</p> <p>9 BY MR. WINTON:</p> <p>10 Q. Okay. And that is why I asked</p> <p>11 because you said the office reopened on</p> <p>12 Monday but --</p> <p>13 A. Technically reopened on Monday.</p> <p>14 Whether anyone was here, I can't believe</p> <p>15 anyone made it in. I know the secretaries</p> <p>16 all live in Staten Island. There is no way</p> <p>17 they would have made it in. You couldn't</p> <p>18 get here.</p> <p>19 Ed, I don't know what was going on</p> <p>20 with Ed so maybe he could have made it in</p> <p>21 but I would be surprised. The place was</p> <p>22 shut down for what seemed a remarkable</p> <p>23 number of days and it was very frustrating</p> <p>24 for me personally trying to get back.</p> <p>25 MR. WINTON: Number 28.</p>
<p style="text-align: right;">Page 166</p> <p>1 Wolfson</p> <p>2 something like the 17th. It was the 17th.</p> <p>3 Because I did manage to call Verizon on her</p> <p>4 BlackBerry and they billed me hundreds of</p> <p>5 dollars for it for advising Verizon that my</p> <p>6 BlackBerry was not working despite what they</p> <p>7 told me. The roaming charges were more than</p> <p>8 \$5 a minute.</p> <p>9 Q. Do you know whether or not anyone</p> <p>10 in your office received that e-mail and did</p> <p>11 anything to make sure that someone else was</p> <p>12 covering?</p> <p>13 A. I don't know. I don't know.</p> <p>14 With the Christmas holiday the</p> <p>15 banks had been closed too anyway so -- I</p> <p>16 don't know.</p> <p>17 Q. Do you know when your office</p> <p>18 reopened?</p> <p>19 A. I assume it would have been that</p> <p>20 Monday.</p> <p>21 Q. I am not familiar enough with that</p> <p>22 particular snowstorm. I don't remember when</p> <p>23 it hit or how long New York was shut down.</p> <p>24 A. It hit -- I was scheduled to</p> <p>25 return on the 26th.</p>	<p style="text-align: right;">Page 168</p> <p>1 Wolfson</p> <p>2 (E-mail from Mr. Seward to Ed</p> <p>3 Keane, Mr. Wolfson and Jorge Rodriguez, Bates</p> <p>4 labeled M&K110 through 117 was marked</p> <p>5 Exhibit 28 for identification)</p> <p>6 BY MR. WINTON:</p> <p>7 Q. So the next document we have got</p> <p>8 is Exhibit 28 which has just been handed to</p> <p>9 you.</p> <p>10 This is an e-mail from Mr. Seward</p> <p>11 to Ed Keane, I assume, E. Keane, to you and</p> <p>12 to Jorge Rodriguez are all here at Mahoney &</p> <p>13 Keane?</p> <p>14 A. I think he was e-mailing everybody</p> <p>15 he had ever dealt with at Mahoney & Keane.</p> <p>16 And Jorge doesn't even -- wasn't even</p> <p>17 working there at the time. He had left.</p> <p>18 Q. Okay. So this is December 29 and</p> <p>19 obviously Mr. Seward is still looking for</p> <p>20 some help with regard to the charter party,</p> <p>21 right?</p> <p>22 A. Yes. I think he wants his escrow</p> <p>23 money.</p> <p>24 Q. I did not see in the documents you</p> <p>25 produced in the normal chronological</p>

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<p>1 Wolfson</p> <p>2 sequence a copy of the December 23, 2010</p> <p>3 letter from Tom Moloney at AES --</p> <p>4 A. It is there.</p> <p>5 Q. Let me finish --</p> <p>6 A. Okay.</p> <p>7 Q. -- demanding return of AES's</p> <p>8 500,000.</p> <p>9 A. Yes.</p> <p>10 Q. I know it is attached later to</p> <p>11 other documents but I didn't see anything at</p> <p>12 this point in time between these 23rd</p> <p>13 e-mails from Mr. Seward and this 29th e-mail</p> <p>14 from Mr. Seward where Mr. Moloney's letter</p> <p>15 is accounted for.</p> <p>16 Do you have any understanding of</p> <p>17 why it is not there?</p> <p>18 A. I attached the whole string on</p> <p>19 occasion so sometimes you have to go back on</p> <p>20 the string.</p> <p>21 If I were to attach each</p> <p>22 individual e-mail it would just be</p> <p>23 duplicative and cause a small stack of</p> <p>24 documents to become boxes.</p> <p>25 Q. That is a pretty significant</p>	<p>1 Wolfson</p> <p>2 MR. WINTON: Yes.</p> <p>3 MS. OROZCO: Okay. 29 is --</p> <p>4 MR. WINTON: 29 is 118 and</p> <p>5 counting --</p> <p>6 MS. OROZCO: When you said 30 I</p> <p>7 thought --</p> <p>8 MR. WINTON: What you are pointing</p> <p>9 out is that I can't count --</p> <p>10 MS. OROZCO: Well, you said 30</p> <p>11 and --</p> <p>12 MR. WINTON: No. That is fair. I</p> <p>13 will plead guilty. I can't count.</p> <p>14 BY MR. WINTON:</p> <p>15 Q. Okay. 29 is the one we are on,</p> <p>16 right.</p> <p>17 Exhibit 29 is a single e-mail from</p> <p>18 Mark Seward to Ed Keane and to you, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the entire text is, "In case</p> <p>21 you are satisfied."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. This came in on December 29 so</p> <p>25 this is before you got back to the office,</p>
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<p>1 Wolfson</p> <p>2 document.</p> <p>3 A. Yes. It is there. It is</p> <p>4 produced.</p> <p>5 Q. You didn't think it was</p> <p>6 significant enough to produce it as it hit</p> <p>7 on the 23rd with an e-mail and an attached</p> <p>8 letter by itself?</p> <p>9 A. I think that is absurd frankly. I</p> <p>10 produced the e-mail. I didn't attach any</p> <p>11 significance to it how I did that.</p> <p>12 MR. WINTON: Number 29.</p> <p>13 (Single e-mail from Mark Seward to</p> <p>14 Ed Keane and Garth Wolfson, Bates labeled</p> <p>15 M&K118 was marked Exhibit 29 for</p> <p>16 identification)</p> <p>17 BY MR. WINTON:</p> <p>18 Q. Exhibit 30 is a one page e-mail</p> <p>19 from Mr. Seward dated December 29, do you</p> <p>20 see that, M&K118?</p> <p>21 MS. OROZCO: What is Exhibit 29?</p> <p>22 Okay.</p> <p>23 MR. WINTON: 28 was M&K110</p> <p>24 through --</p> <p>25 MS. OROZCO: Through 117.</p>	<p>1 Wolfson</p> <p>2 right?</p> <p>3 A. Right.</p> <p>4 Q. Having now read this e-mail do you</p> <p>5 have an understanding of what that means?</p> <p>6 A. Sure. He is saying in case I am</p> <p>7 satisfied that the funds should be remitted</p> <p>8 to Milestone under the escrow agreement</p> <p>9 these are the bank details for us to do</p> <p>10 that.</p> <p>11 Q. So, we have the double line and</p> <p>12 then Milestone and a bank in Latvia and so</p> <p>13 forth. That is the bank account they wanted</p> <p>14 you to send the \$500,000 to; is that</p> <p>15 correct?</p> <p>16 A. Seems obvious to me, yes.</p> <p>17 Q. I am a little slow.</p> <p>18 Do you know when your office first</p> <p>19 picked up Mr. Moloney's December 23 letter,</p> <p>20 held it in its hand and read it?</p> <p>21 A. I know there was a discussion, Ed</p> <p>22 spoke to him before I did because I was</p> <p>23 abroad and I know at the same time as we</p> <p>24 have been going through Mr. Seward's e-mails</p> <p>25 as you pointed out before AES was also</p>

<p style="text-align: right;">Page 173</p> <p>1 Wolfson</p> <p>2 demanding return of the funds and so I know</p> <p>3 Ed spoke to him at some point but the first</p> <p>4 time I saw was in an airport and I believe</p> <p>5 it was Dallas.</p> <p>6 Q. I do not see any e-mail and I</p> <p>7 don't believe I saw an e-mail anywhere in</p> <p>8 here in which your office forwarded</p> <p>9 Mr. Moloney's December 23 demand for return</p> <p>10 of its money to Mr. Seward. Did I miss it?</p> <p>11 A. I thought I did. Maybe I didn't</p> <p>12 but I certainly advised him that they were</p> <p>13 demanding return of the funds.</p> <p>14 I wrote some lengthy letters to</p> <p>15 Tom and I forwarded them at the time I wrote</p> <p>16 them to both -- or shortly after I wrote</p> <p>17 them to both -- to Mr. Seward and after he</p> <p>18 retained Mr. Tisdale, to Mr. Tisdale.</p> <p>19 Q. Here on the 29th when all of these</p> <p>20 e-mails are going back and forth --</p> <p>21 A. I wasn't even here. I can assure</p> <p>22 you I didn't send anything because I wasn't</p> <p>23 even in the country.</p> <p>24 MR. WINTON: Number 30.</p> <p>25 (Document Bates labeled M&K119 to</p>	<p style="text-align: right;">Page 175</p> <p>1 Wolfson</p> <p>2 Mr. Seward and Jan Michalek relating to the</p> <p>3 escrow funds.</p> <p>4 I really didn't have a whole lot</p> <p>5 of questions on that one so the next one I</p> <p>6 want to get to.</p> <p>7 MR. WINTON: Number 32.</p> <p>8 (Document Bates labeled M&K124 to</p> <p>9 127 was marked Exhibit 32 for</p> <p>10 identification)</p> <p>11 BY MR. WINTON:</p> <p>12 Q. Exhibit 32 should be M&K124 to</p> <p>13 127, correct?</p> <p>14 A. Yes.</p> <p>15 Q. I really want to focus on that top</p> <p>16 e-mail on page 124.</p> <p>17 A. Okay.</p> <p>18 Q. M&K124. This is an e-mail from</p> <p>19 Mr. Seward back to Mr. Keane in response to</p> <p>20 his which is 30, noting that the escrow</p> <p>21 agreement does not treat the \$500,000 as</p> <p>22 liquidated damages.</p> <p>23 A. I think --</p> <p>24 Q. Let me ask the question.</p> <p>25 A. Sorry.</p>
<p style="text-align: right;">Page 174</p> <p>1 Wolfson</p> <p>2 122 was marked Exhibit 30 for</p> <p>3 identification)</p> <p>4 BY MR. WINTON:</p> <p>5 Q. Exhibit 30 is M&K119 to 123,</p> <p>6 correct?</p> <p>7 A. I have M&K119 to 122.</p> <p>8 Q. Okay. 122. You are right. My</p> <p>9 copies are not stapled.</p> <p>10 At the bottom of 119 is an e-mail</p> <p>11 from Mr. Keane to Mr. Seward and the e-mail</p> <p>12 carries over to the top of 120?</p> <p>13 A. Yes.</p> <p>14 Q. And Mr. Keane notes to Mr. Seward,</p> <p>15 "The escrow agreement does not provide for</p> <p>16 the amount held to be treated as liquidated</p> <p>17 damages."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 MR. WINTON: Number 31.</p> <p>21 (Document Bates labeled M&K123 was</p> <p>22 marked Exhibit 31 for identification)</p> <p>23 BY MR. WINTON:</p> <p>24 Q. Exhibit 31 is M&K123.</p> <p>25 This is just an exchange between</p>	<p style="text-align: right;">Page 176</p> <p>1 Wolfson</p> <p>2 Q. You saw that in Mr. Keane's</p> <p>3 e-mail, right?</p> <p>4 A. Yes.</p> <p>5 Q. Here is Mr. Seward's response:</p> <p>6 "The only reason the escrow says</p> <p>7 'liquidated damages' is due to forfeit</p> <p>8 provisions" -- I assume it means forfeiture</p> <p>9 but it says forfeit provisions -- "and I did</p> <p>10 not want it to be construed as a penalty."</p> <p>11 Do you have any understanding what</p> <p>12 he is talking about because I have looked at</p> <p>13 the escrow agreement and I can't find the</p> <p>14 words "liquidated damages" anywhere in that</p> <p>15 document.</p> <p>16 So do you have an understanding?</p> <p>17 If you don't, you don't.</p> <p>18 A. No. I really wasn't privy to this</p> <p>19 discussion. I never looked at it with an</p> <p>20 eye toward that issue.</p> <p>21 Q. Okay. Fair enough.</p> <p>22 MR. WINTON: Number 33.</p> <p>23 (Document Bates labeled M&K128 to</p> <p>24 130 was marked Exhibit 33 for</p> <p>25 identification)</p>

<p style="text-align: right;">Page 177</p> <p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. Exhibit 33 is M&K128 to 130.</p> <p>4 This is Igor Violin from Chaika</p> <p>5 Agency to Mr. Keane, copy to Mr. Seward.</p> <p>6 Did you receive this?</p> <p>7 A. I know I have seen it because I</p> <p>8 gathered these documents personally.</p> <p>9 Q. But you weren't involved in this</p> <p>10 exchange?</p> <p>11 A. No. As I said I was not in the</p> <p>12 country.</p> <p>13 Q. I am sorry if you already said</p> <p>14 this I apologize.</p> <p>15 When did you get back into the</p> <p>16 country? When did you first come back into</p> <p>17 the office?</p> <p>18 A. It is a good question. It is in</p> <p>19 my e-mail to Tom Moloney when I got back. I</p> <p>20 told him exactly where I was because I</p> <p>21 regretted the delay in responding to him.</p> <p>22 Q. Okay. We will see it.</p> <p>23 Do you have an understanding who</p> <p>24 Igor Violin is?</p> <p>25 A. I have an understanding from this</p>	<p style="text-align: right;">Page 179</p> <p>1 Wolfson</p> <p>2 still December 29.</p> <p>3 A. I am not back in the country. I</p> <p>4 was delayed I think four days. So I didn't</p> <p>5 get back until around New Year's. I think I</p> <p>6 got back around the 30th. It is in the</p> <p>7 e-mail.</p> <p>8 Q. Okay. But you recognize this to</p> <p>9 be an exchange between Mr. Seward and</p> <p>10 Mr. Keane of your office?</p> <p>11 A. Sure.</p> <p>12 MR. WINTON: Number 35.</p> <p>13 (Document Bates labeled M&K139 to</p> <p>14 145 was marked Exhibit 35 for</p> <p>15 identification)</p> <p>16 BY MR. WINTON:</p> <p>17 Q. Exhibit 35 is M&K139 to 145. Is</p> <p>18 that correct?</p> <p>19 A. Yes.</p> <p>20 Q. This appears to pick up as a new</p> <p>21 e-mail on the third page, 141, with an</p> <p>22 e-mail from Tom Moloney to you dated</p> <p>23 December 27 saying they haven't received the</p> <p>24 money back in response to the December 23</p> <p>25 demand for return of the money?</p>
<p style="text-align: right;">Page 178</p> <p>1 Wolfson</p> <p>2 that he must be a representative of</p> <p>3 Milestone or Milestone's interests since it</p> <p>4 is the Chaika Agency address so he obviously</p> <p>5 got Ed's e-mail and wrote to him directly.</p> <p>6 Q. But you don't know what his</p> <p>7 position is?</p> <p>8 A. I have no idea.</p> <p>9 MR. WINTON: Number 34.</p> <p>10 (Document Bates labeled M&K135 to</p> <p>11 138 was marked Exhibit 34 for</p> <p>12 identification)</p> <p>13 BY MR. WINTON:</p> <p>14 Q. Is -- Exhibit 34 is M&K135, 136?</p> <p>15 A. I have 135 to 138.</p> <p>16 Q. You are right.</p> <p>17 MS. OROZCO: I have to 136.</p> <p>18 MR. WINTON: It should be just</p> <p>19 through 138.</p> <p>20 MS. OROZCO: Okay. All right, you</p> <p>21 are right I do. That is what I have.</p> <p>22 Sorry.</p> <p>23 BY MR. WINTON:</p> <p>24 Q. You are not back in the country</p> <p>25 yet by the time this is going on? This is</p>	<p style="text-align: right;">Page 180</p> <p>1 Wolfson</p> <p>2 A. Yes.</p> <p>3 Q. Then the 28th the followup saying</p> <p>4 I haven't heard from you?</p> <p>5 A. Yes.</p> <p>6 Q. Then on the 29th --</p> <p>7 A. It looks like I became aware of</p> <p>8 it.</p> <p>9 Q. Apparently on the 29th at 1:01,</p> <p>10 there is an e-mail on the bottom of the</p> <p>11 second page, 140, from Tom Moloney to Ed</p> <p>12 Keane saying "as requested," which I assume</p> <p>13 means he is forwarding to Mr. Keane the</p> <p>14 letter?</p> <p>15 A. I believe Mr. Keane had a</p> <p>16 conversation with Mr. Moloney on that date</p> <p>17 and that is when Mr. Keane I suppose</p> <p>18 responded. I guess the request was made</p> <p>19 during that conversation.</p> <p>20 Q. What request?</p> <p>21 A. It says, "As requested," and at</p> <p>22 the bottom of M&K140 --</p> <p>23 Q. Right. I am assuming that in that</p> <p>24 conversation between Mr. Keane and</p> <p>25 Mr. Moloney there was a request I am</p>

<p style="text-align: right;">Page 181</p> <p>1 Wolfson</p> <p>2 assuming for that December 23 letter?</p> <p>3 A. Sure.</p> <p>4 Q. So then we get to the top of the</p> <p>5 second page which is 140 from Mr. Moloney,</p> <p>6 Ed and Garth, and now he is stating his</p> <p>7 position about the money being due to come</p> <p>8 back to AES on demand, right?</p> <p>9 A. Sorry. Can you repeat the</p> <p>10 question? I was reading.</p> <p>11 Q. Yes. The top of the second page,</p> <p>12 140, this is Mr. Moloney to Mr. Keane and to</p> <p>13 you although you are not back in the office</p> <p>14 yet, right?</p> <p>15 A. Yes.</p> <p>16 Q. So do you know whether or not you</p> <p>17 had BlackBerry service by the 29th?</p> <p>18 A. No. I got my BlackBerry briefly</p> <p>19 at the Dallas airport when I was on a</p> <p>20 stopover.</p> <p>21 Q. Okay.</p> <p>22 A. So much for my direct flight. My</p> <p>23 nonstop.</p> <p>24 Q. He is stating, "he" being</p> <p>25 Mr. Moloney, is stating his position that</p>	<p style="text-align: right;">Page 183</p> <p>1 Wolfson</p> <p>2 just wanted you to look at them and identify</p> <p>3 them and I will be right back so we can go</p> <p>4 off the record while that happens.</p> <p>5 MR. WINTON: Mark this as Exhibit</p> <p>6 36.</p> <p>7 (Document Bates labeled M&K146 to</p> <p>8 149 was marked Exhibit 36 for</p> <p>9 identification)</p> <p>10 MR. WINTON: Number 37.</p> <p>11 (Document Bates labeled M&K150 to</p> <p>12 153 was marked Exhibit 37 for</p> <p>13 identification)</p> <p>14 MR. WINTON: Number 38.</p> <p>15 (Document Bates labeled M&K154 to</p> <p>16 156 was marked Exhibit 38 for</p> <p>17 identification)</p> <p>18 MR. WINTON: Number 39.</p> <p>19 (Document Bates labeled M&K157 to</p> <p>20 163 was marked Exhibit 39 for</p> <p>21 identification)</p> <p>22 MR. WINTON: Off the record.</p> <p>23 (Discussion off the record)</p> <p>24 BY MR. WINTON:</p> <p>25 Q. We are back on the record.</p>
<p style="text-align: right;">Page 182</p> <p>1 Wolfson</p> <p>2 the deal with -- between Estech and</p> <p>3 Milestone that is contained in the escrow</p> <p>4 agreement has nothing to do with AES, AES's</p> <p>5 rights are contained in the December 2 trust</p> <p>6 agreement letter between AES and Mahoney &</p> <p>7 Keane?</p> <p>8 A. That's right.</p> <p>9 Q. So on December 29 at, I assume</p> <p>10 this is 7:32 in the evening here in New</p> <p>11 York, Mr. Keane is asking Mr. Seward if he</p> <p>12 has any comments and I can't tell whether he</p> <p>13 is forwarding that letter or just asking for</p> <p>14 comments on Mr. Moloney's e-mail that is</p> <p>15 below that.</p> <p>16 So you weren't a party to this at</p> <p>17 this point in time, right?</p> <p>18 A. No.</p> <p>19 Q. I have asked the court reporter to</p> <p>20 mark a series -- I think there is about four</p> <p>21 or five e-mails in a row where I believe</p> <p>22 Mr. Keane is forwarding to you, yes, he is</p> <p>23 forwarding to you the chainings of e-mails</p> <p>24 and what I -- rather than go through them it</p> <p>25 is forwarding stuff we already looked at I</p>	<p style="text-align: right;">Page 184</p> <p>1 Wolfson</p> <p>2 We have marked as Exhibits 36, 37,</p> <p>3 38 and 39, a series of the e-mails</p> <p>4 forwarding -- in which Mr. Keane was</p> <p>5 forwarding to you the exchanges in this</p> <p>6 matter.</p> <p>7 Have you had a chance to look at</p> <p>8 those?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recognize those to be</p> <p>11 e-mails that he forwarded to you on the</p> <p>12 29th?</p> <p>13 A. Yes, I do.</p> <p>14 Q. 36 is M&K146 to 149.</p> <p>15 37 is M&K150 to 153.</p> <p>16 38 is M&K154 to 156.</p> <p>17 And 39 is 157 to 163?</p> <p>18 A. That's correct.</p> <p>19 Q. We have already gone over I</p> <p>20 suspect everything that is in there so I</p> <p>21 don't feel any pressing need to go over it</p> <p>22 again.</p> <p>23 MR. WINTON: Number 40.</p> <p>24 (Document Bates labeled M&K164 to</p> <p>25 169 was marked Exhibit 40 for</p>

<p style="text-align: right;">Page 185</p> <p>1 Wolfson</p> <p>2 identification)</p> <p>3 BY MR. WINTON:</p> <p>4 Q. We have marked as Exhibit 40</p> <p>5 M&K164 to 169.</p> <p>6 Do you recognize that to be a</p> <p>7 response from you to Mr. Keane following the</p> <p>8 various forwards?</p> <p>9 A. Yes.</p> <p>10 Q. It also includes your e-mail to</p> <p>11 Mr. Moloney indicating that due to the</p> <p>12 blizzard you are struggling to get back to</p> <p>13 the office and this is dated December 29 at</p> <p>14 6:43 in the evening.</p> <p>15 Do you see that?</p> <p>16 A. Yes. This, I believe I sent this</p> <p>17 while I was in the security line at Dallas.</p> <p>18 Q. Then the top e-mail on M&K164 is</p> <p>19 from you to Ed Keane also December 29 at</p> <p>20 7:37 p.m.?</p> <p>21 A. Yes.</p> <p>22 Q. And you say that you are going to</p> <p>23 review all of this tomorrow, the 30th. I</p> <p>24 take it once you get back to the office?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 187</p> <p>1 Wolfson</p> <p>2 or whether AES is entitled to demand they</p> <p>3 return them.</p> <p>4 Q. Would you agree with me that is</p> <p>5 precisely the discussion that we had about</p> <p>6 these two e-mails, the one you sent to</p> <p>7 Mr. Seward that is at the bottom of the</p> <p>8 first page of Exhibit 11, M&K023, and his</p> <p>9 response back at the top of Exhibit 11, page</p> <p>10 023?</p> <p>11 A. I believe I have discussed those</p> <p>12 issues, those e-mails at such length</p> <p>13 already. I think it does touch upon the</p> <p>14 issue.</p> <p>15 However, I don't believe there is</p> <p>16 a real disconnect there.</p> <p>17 Q. You don't think that those two</p> <p>18 e-mails are inconsistent with each other?</p> <p>19 A. No. I wrote the e-mail. I know</p> <p>20 what I was thinking when I wrote it.</p> <p>21 I was just not clear what Tom</p> <p>22 Moloney was saying.</p> <p>23 Q. On the first page of Exhibit 40,</p> <p>24 M&K164 you say, "But as we were merely</p> <p>25 escrow agents my inclination is to offer</p>
<p style="text-align: right;">Page 186</p> <p>1 Wolfson</p> <p>2 Q. You indicate you are not sure</p> <p>3 exactly what is going on.</p> <p>4 Would you agree with me that the</p> <p>5 dispute that has developed in this case is</p> <p>6 precisely the disconnect in those two</p> <p>7 December 2 communications, the one you sent</p> <p>8 to Mr. Seward stating what Mr. Moloney told</p> <p>9 you and then his response to you about what</p> <p>10 you can confirm to Mr. Moloney?</p> <p>11 A. I think those competing</p> <p>12 understandings are what has since erupted</p> <p>13 now to be the main issue but when I wrote</p> <p>14 this I wasn't referring to that.</p> <p>15 I was saying that I didn't know</p> <p>16 what was going on as far as these forwarded</p> <p>17 messages. I was on BlackBerry and I really</p> <p>18 couldn't see what the dispute was about,</p> <p>19 anything about the breach or whatever</p> <p>20 occurred. So that is all I was talking</p> <p>21 about then.</p> <p>22 Obviously since that time we all</p> <p>23 know that the dispute that has developed has</p> <p>24 been along those lines, about whether the</p> <p>25 funds were intended to move into the escrow</p>	<p style="text-align: right;">Page 188</p> <p>1 Wolfson</p> <p>2 them time to work it out or litigate."</p> <p>3 "Them" being AES and Milestone?</p> <p>4 A. Yes. Possibly Estech. I wasn't</p> <p>5 exactly sure what was going on at that</p> <p>6 point.</p> <p>7 Q. Would you agree with me that when</p> <p>8 you say we are merely escrow agents that is</p> <p>9 not entirely accurate, you in this matter</p> <p>10 acted beyond the mere capacity as an escrow</p> <p>11 agent?</p> <p>12 A. No. I disagree with that.</p> <p>13 Q. So you think that when you were</p> <p>14 providing legal advice to Milestone in</p> <p>15 response to questions from Milestone's</p> <p>16 London solicitor --</p> <p>17 MS. OROZCO: Objection.</p> <p>18 BY MR. WINTON:</p> <p>19 Q. -- that that is entirely</p> <p>20 consistent with simply being an escrow</p> <p>21 agent?</p> <p>22 A. You asked me a general question</p> <p>23 about assignments. I gave him a one-line</p> <p>24 answer. If you want to argue that means</p> <p>25 something else feel free to argue it but I</p>

<p style="text-align: right;">Page 189</p> <p>1 Wolfson</p> <p>2 am not going to sit here and admit it for</p> <p>3 you because I don't think it does.</p> <p>4 In fact when he asked me advice</p> <p>5 about the escrow, about getting the escrow</p> <p>6 back, I refused to give it to him.</p> <p>7 Q. Well, I am talking about the</p> <p>8 advice you gave him with regard to the</p> <p>9 multiple assignments of letter of credit.</p> <p>10 A. Which has nothing at all to do</p> <p>11 with this.</p> <p>12 Q. But that is a role you performed</p> <p>13 in this case in addition to being an escrow</p> <p>14 agent?</p> <p>15 A. I have given Mark Seward advice,</p> <p>16 short advice all the time and I probably</p> <p>17 will do so in the future hopefully.</p> <p>18 Q. So your position is when you give</p> <p>19 legal advice to a client and charge him for</p> <p>20 it that is not acting as a lawyer; is that</p> <p>21 correct?</p> <p>22 A. I have said that, I admitted that</p> <p>23 line of advice was in the nature of legal</p> <p>24 advice, however I don't think that it</p> <p>25 established me as an attorney -- established</p>	<p style="text-align: right;">Page 191</p> <p>1 Wolfson</p> <p>2 I was trying to send it out as soon as I got</p> <p>3 back to the office.</p> <p>4 Q. I was trying to expedite but I</p> <p>5 will go back and do that.</p> <p>6 A. It was sometimes around New</p> <p>7 Year's.</p> <p>8 MR. WINTON: Number 41.</p> <p>9 (Document Bates labeled M&K170 was</p> <p>10 marked Exhibit 41 for identification)</p> <p>11 BY MR. WINTON:</p> <p>12 Q. We have marked as Exhibit 41</p> <p>13 M&K170 which is an exchange between Igor</p> <p>14 Violin and Jan Michalek primarily but it was</p> <p>15 copied to Ed Keane here.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. I take it you were not involved in</p> <p>19 this exchange?</p> <p>20 A. No. But -- no.</p> <p>21 MR. WINTON: Number 42.</p> <p>22 (Document Bates labeled K181 to</p> <p>23 190 was marked Exhibit 42 for</p> <p>24 identification)</p> <p>25</p>
<p style="text-align: right;">Page 190</p> <p>1 Wolfson</p> <p>2 an attorney-client relationship in this</p> <p>3 matter as the escrow agency.</p> <p>4 The escrow agency was something</p> <p>5 separate and distinct.</p> <p>6 Q. And as a consequence of your</p> <p>7 statement that in this -- in regard to this</p> <p>8 dispute that you acted solely as an escrow</p> <p>9 agent is not entirely accurate. You did</p> <p>10 have another role, it may not be relevant to</p> <p>11 the dispute but you did have another role.</p> <p>12 A. I have had lots of other roles.</p> <p>13 Q. So you would agree you did have</p> <p>14 another role and that statement is not</p> <p>15 accurate?</p> <p>16 A. I was an escrow agent. As far as</p> <p>17 anything to do with the dispute in this</p> <p>18 lawsuit I was an escrow agent. That is my</p> <p>19 answer. You can take it or leave it.</p> <p>20 Q. You had a series of exchanges with</p> <p>21 Mr. Moloney, correct?</p> <p>22 A. Correct.</p> <p>23 Q. In early January where you --</p> <p>24 A. If you have the e-mail in front of</p> <p>25 you you could probably help me find exactly.</p>	<p style="text-align: right;">Page 192</p> <p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. Exhibit 42 is M&K181 to 190.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Would you agree that the first</p> <p>7 e-mail in this chain is an e-mail from you</p> <p>8 to Thomas Tisdale?</p> <p>9 A. What do you mean, the most recent</p> <p>10 in the chain?</p> <p>11 Q. Yes, the top. The very -- the</p> <p>12 last one in order but the first one on this</p> <p>13 exhibit so it is at the top of page 181 of</p> <p>14 Exhibit 42.</p> <p>15 A. Yes.</p> <p>16 Q. And what you are doing with</p> <p>17 this -- in this December 30 e-mail is you</p> <p>18 are forwarding to Mr. Tisdale this series of</p> <p>19 exchanges you had with Mr. Moloney where the</p> <p>20 two of you were?</p> <p>21 A. Right. I understood -- somehow I</p> <p>22 learned that Tom had been retained I think</p> <p>23 as counsel for Milestone and so rather than</p> <p>24 reporting just to Mark as I had I felt it</p> <p>25 behooved me to let both sides know what was</p>

<p style="text-align: right;">Page 193</p> <p>1 Wolfson</p> <p>2 going on so I sent it on to Tom.</p> <p>3 Q. As a mere escrow agent why were</p> <p>4 you forwarding this information to</p> <p>5 Milestone's attorneys, litigation counsel?</p> <p>6 A. Because Milestone was one of the</p> <p>7 claimants who was seeking the return of the</p> <p>8 funds. So I don't think I hid anything from</p> <p>9 Tom either in saying that Milestone had also</p> <p>10 been seeking the return of the funds.</p> <p>11 Q. Would you agree with me that once</p> <p>12 counsel appeared on behalf of AES that you</p> <p>13 did not similarly forward this information</p> <p>14 voluntarily so that everybody was on -- was</p> <p>15 advised of what had happened?</p> <p>16 A. I gave this to you.</p> <p>17 Q. In response to a subpoena.</p> <p>18 A. I know I gave it to you. I don't</p> <p>19 remember when I gave to it. I know I gave</p> <p>20 it to you.</p> <p>21 Q. You sent this to Mr. Tisdale as</p> <p>22 counsel for Milestone on September 30,</p> <p>23 correct?</p> <p>24 A. This went to AES. Presumably you</p> <p>25 would have already had it from AES anyway.</p>	<p style="text-align: right;">Page 195</p> <p>1 Wolfson</p> <p>2 Milestone's counsel when counsel for AES</p> <p>3 appeared shortly after the 4th of January</p> <p>4 you did not similarly forward all this</p> <p>5 information to AES's counsel?</p> <p>6 MS. OROZCO: Objection.</p> <p>7 THE WITNESS: That was after the</p> <p>8 suit had been commenced. I gave it to</p> <p>9 you in the course of discovery.</p> <p>10 I don't know what you are trying</p> <p>11 to establish.</p> <p>12 BY MR. WINTON:</p> <p>13 Q. In response to a subpoena you</p> <p>14 produced this to AES.</p> <p>15 A. You keep saying in response to a</p> <p>16 subpoena, Jim. But I offered to give it to</p> <p>17 you at any time without any subpoena and you</p> <p>18 insisted on giving it a subpoena.</p> <p>19 So let's not try to characterize</p> <p>20 this as something other than it is. I have</p> <p>21 been cooperative with you just as I have</p> <p>22 with the other side throughout.</p> <p>23 Q. You are your own admission --</p> <p>24 A. You just don't like my opinion. I</p> <p>25 am sorry about that.</p>
<p style="text-align: right;">Page 194</p> <p>1 Wolfson</p> <p>2 This is something I sent to AES.</p> <p>3 Q. And you were sending it to --</p> <p>4 presumably these exchanges went to Milestone</p> <p>5 as well since it is going to chartering</p> <p>6 Chaika Agency, Mark Seward, Ed Keane. All</p> <p>7 of these people who have been copied on this</p> <p>8 all along.</p> <p>9 A. But you appeared in the context of</p> <p>10 litigation and as I said in the response to</p> <p>11 my subpoena once the suit was started I am</p> <p>12 not giving you everything that was exchanged</p> <p>13 in discovery and the like but you appeared</p> <p>14 much later in the action than Mr. Tisdale.</p> <p>15 Q. You understood on December 30 that</p> <p>16 Mr. Tisdale's firm, who is here as counsel</p> <p>17 for Milestone in this matter, had been</p> <p>18 retained to represent Milestone in trying to</p> <p>19 get this \$500,000?</p> <p>20 A. Yes.</p> <p>21 Q. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So would you agree with me</p> <p>24 that although you forwarded all this</p> <p>25 information at your own initiative to</p>	<p style="text-align: right;">Page 196</p> <p>1 Wolfson</p> <p>2 MR. WINTON: Objection.</p> <p>3 Non-responsive.</p> <p>4 BY MR. WINTON:</p> <p>5 Q. Come on, let's not go through that</p> <p>6 again. Can we just --</p> <p>7 A. Don't go through with me. You are</p> <p>8 coming after me, my friend.</p> <p>9 Q. Question and answer.</p> <p>10 A. Stick with questions and answers</p> <p>11 and we will be fine.</p> <p>12 Q. Would you agree that on your own</p> <p>13 volition -- on your own initiative you sent</p> <p>14 this to Milestone's counsel but it is your</p> <p>15 own initiative you never sent it to AES'</p> <p>16 counsel?</p> <p>17 MS. OROZCO: Objection.</p> <p>18 THE WITNESS: Disagree.</p> <p>19 BY MR. WINTON:</p> <p>20 Q. Disagree. On your own initiative</p> <p>21 you sent this to AES's counsel?</p> <p>22 MS. OROZCO: Objection.</p> <p>23 THE WITNESS: On my own initiative</p> <p>24 I offered to give you whatever you</p> <p>25 wanted from my files many times.</p>

<p style="text-align: right;">Page 197</p> <p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. When?</p> <p>4 A. As soon as we met for the first</p> <p>5 time in the conference and any time</p> <p>6 thereafter.</p> <p>7 Q. That would have been April 18th, I</p> <p>8 believe.</p> <p>9 A. Now let's put you under oath.</p> <p>10 Q. Is that the date of the</p> <p>11 conference --</p> <p>12 A. I don't remember the exact</p> <p>13 conference but I offered it and I think</p> <p>14 Claurisse was present when I offered it many</p> <p>15 times as well.</p> <p>16 Q. That was the scheduling conference</p> <p>17 in this matter when we were all present in</p> <p>18 the courtroom, correct?</p> <p>19 A. Jim, I probably offered it to you</p> <p>20 if you called me before, I probably offered</p> <p>21 it to you then. And it has been a month</p> <p>22 now. Are you going to tell me that I</p> <p>23 haven't done that? Say it. Put him under</p> <p>24 oath and have him say it.</p> <p>25 Q. You are a piece of work,</p>	<p style="text-align: right;">Page 199</p> <p>1 Wolfson</p> <p>2 A. I was a garnishee in a lawsuit and</p> <p>3 I did not undertake, you know, early to send</p> <p>4 it to you, no.</p> <p>5 Q. But you were an escrow agent in</p> <p>6 this matter yet you unilaterally sent it to</p> <p>7 Mr. Tisdale, correct, on December 30th way</p> <p>8 before there was a lawsuit?</p> <p>9 MS. OROZCO: Objection.</p> <p>10 THE WITNESS: He is counsel for</p> <p>11 Milestone.</p> <p>12 BY MR. WINTON:</p> <p>13 Q. Your client?</p> <p>14 MS. OROZCO: Objection.</p> <p>15 BY MR. WINTON:</p> <p>16 Q. I can't help it if you don't like</p> <p>17 what --</p> <p>18 A. I didn't say --</p> <p>19 Q. -- getting called to account for</p> <p>20 what you did, Mr. Wolfson.</p> <p>21 A. I didn't do anything wrong. I</p> <p>22 stand by what I did.</p> <p>23 Q. We will let the court figure that</p> <p>24 out.</p> <p>25 A. I didn't realize I was a party.</p>
<p style="text-align: right;">Page 198</p> <p>1 Wolfson</p> <p>2 Mr. Wolfson.</p> <p>3 A. It is the truth. I am under oath.</p> <p>4 Are you?</p> <p>5 I offered many times to give you</p> <p>6 whatever I had. Did I not?</p> <p>7 Q. When did you first offer?</p> <p>8 A. I don't remember the exact time I</p> <p>9 offered it but I did offer it many times.</p> <p>10 Not that this has any bearing on anything.</p> <p>11 Q. I think it does have bearing on</p> <p>12 stuff.</p> <p>13 A. I am under oath and I am telling</p> <p>14 it like it is.</p> <p>15 Q. And your testimony under oath is</p> <p>16 that --</p> <p>17 A. Well, let's get yours.</p> <p>18 Q. -- on December 30 you sent this to</p> <p>19 Mr. Tisdale's office, counsel for Milestone?</p> <p>20 A. Yes. I did not send it to you.</p> <p>21 You had not even appeared in the case yet.</p> <p>22 Q. And when I did appear you did not</p> <p>23 on your own initiative turn around and send</p> <p>24 a similar message to me even though you had</p> <p>25 my e-mail address, correct?</p>	<p style="text-align: right;">Page 200</p> <p>1 Wolfson</p> <p>2 Q. Don't push your luck.</p> <p>3 A. I don't like being threatened by</p> <p>4 you either.</p> <p>5 MR. WINTON: Number 43.</p> <p>6 (Document Bates labeled M&K191 was</p> <p>7 marked Exhibit 43 for identification)</p> <p>8 BY MR. WINTON:</p> <p>9 Q. Exhibit 43 is M&K191.</p> <p>10 Do you recognize that as an e-mail</p> <p>11 from Mr. Seward to Tom Moloney and to you?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And in this e-mail Mr. Seward is</p> <p>14 indicating that he has instructed counsel in</p> <p>15 New York to commence proceedings against AES</p> <p>16 for tortious interference with Milestone's</p> <p>17 dealings, it says.</p> <p>18 Do you see that?</p> <p>19 A. It says what it says, yes.</p> <p>20 Q. Did you discuss with Mr. Seward</p> <p>21 filing suit against AES for tortious</p> <p>22 interference?</p> <p>23 A. No. It was never my direction for</p> <p>24 him to do that. I was advised by them of</p> <p>25 the suit. But it was not my idea nor did I</p>

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<p>1 Wolfson</p> <p>2 ever discuss it.</p> <p>3 I received a call from, I don't</p> <p>4 remember who it was, Margaret Thompson that</p> <p>5 they were doing it.</p> <p>6 MR. WINTON: Number 44.</p> <p>7 (Document Bates labeled M&K197</p> <p>8 through 205 was marked Exhibit 44 for</p> <p>9 identification)</p> <p>10 BY MR. WINTON:</p> <p>11 Q. Exhibit 44 consists of M&K197</p> <p>12 through 205.</p> <p>13 Do you recognize that document,</p> <p>14 series of exchanges?</p> <p>15 A. Yes.</p> <p>16 Q. On top is an e-mail from you to</p> <p>17 Mr. Seward and to Mr. Tisdale?</p> <p>18 A. Yes.</p> <p>19 Q. With a copy to Mr. Keane?</p> <p>20 A. Yes.</p> <p>21 Q. You were forwarding to Mr.</p> <p>22 Tisdale, litigation counsel for Milestone,</p> <p>23 this exchange?</p> <p>24 A. Yes.</p> <p>25 Q. Again, you did not --</p>	<p>1 Wolfson</p> <p>2 MR. WINTON: Number 45.</p> <p>3 (Document Bates labeled M&K206</p> <p>4 through 208 was marked Exhibit 45 for</p> <p>5 identification)</p> <p>6 BY MR. WINTON:</p> <p>7 Q. Exhibit 45 is M&K206 through 209.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Take a look at the last page,</p> <p>11 M&K209 if you would.</p> <p>12 A. Yes.</p> <p>13 Q. Is -- this is the same as the</p> <p>14 document that Mr. Keane pulled earlier</p> <p>15 today, I believe.</p> <p>16 A. See that. We did produce it.</p> <p>17 Q. I now see it and recognize it and</p> <p>18 I appreciate it. Thank you.</p> <p>19 MR. KEANE: You are welcome.</p> <p>20 BY MR. WINTON:</p> <p>21 Q. So actually this Exhibit 45 should</p> <p>22 not include 209?</p> <p>23 A. No. Because this is an attachment</p> <p>24 to an e-mail where we were requested by</p> <p>25 Mr. Seward to forward him a copy of the same</p>
Page 202	Page 204
<p>1 Wolfson</p> <p>2 A. Jim, you hadn't appeared yet.</p> <p>3 Q. I understand that. But I think we</p> <p>4 appeared fairly shortly after that.</p> <p>5 A. I had given you my entire file. I</p> <p>6 don't understand what the problems are.</p> <p>7 Mr. Moloney wanted me to tell them</p> <p>8 they wanted their money back and while we</p> <p>9 were there convey their position.</p> <p>10 Q. Mr. Moloney asked you to send this</p> <p>11 to Mr. Tisdale?</p> <p>12 A. I believe he wanted me to make it</p> <p>13 clear to them what his position was.</p> <p>14 Q. Is it your testimony that</p> <p>15 Mr. Moloney asked you to send this to</p> <p>16 Mr. Tisdale?</p> <p>17 A. I don't know if he knew about</p> <p>18 Mr. Tisdale. He wanted me to send it to</p> <p>19 Milestone. Tisdale was Milestone's</p> <p>20 attorney.</p> <p>21 Q. Well, Seward was Milestone's</p> <p>22 attorney.</p> <p>23 Tisdale was Milestone's litigation</p> <p>24 counsel, right?</p> <p>25 A. They are both their attorneys.</p>	<p>1 Wolfson</p> <p>2 document you asked for.</p> <p>3 Q. Right. So -- and I apologize. I</p> <p>4 did not recognize that to be, although it is</p> <p>5 pretty obvious now that I have seen it, that</p> <p>6 it is the IOLA deposit.</p> <p>7 MR. KEANE: And with all apology</p> <p>8 we probably should have produced it</p> <p>9 separately.</p> <p>10 So anyway, you got it. There it</p> <p>11 is and it still sits in our escrow.</p> <p>12 BY MR. WINTON:</p> <p>13 Q. Exhibit 45 is a three-page</p> <p>14 document, isn't it?</p> <p>15 A. Yes.</p> <p>16 Q. Exhibit 45 is now a three-page</p> <p>17 document consisting of M&K206 through 208,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the bottom part of the first</p> <p>21 page, 206, is an e-mail from Mr. Seward to</p> <p>22 you dated January 10 asking you to invoice</p> <p>23 him for services or invoice Milestone</p> <p>24 actually for services setting up the escrow?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 205</p> <p>1 Wolfson</p> <p>2 Q. Then the next sentence, "Other</p> <p>3 stuff you can deduct also."</p> <p>4 Can you explain that, what your</p> <p>5 understanding was?</p> <p>6 A. I meant that to be following</p> <p>7 setting up the escrow, their continued</p> <p>8 involvement in this lawsuit.</p> <p>9 Q. What does it mean -- what did you</p> <p>10 understand "deduct" to mean?</p> <p>11 A. Billed. As under the escrow</p> <p>12 agreement they have to pay for our services</p> <p>13 so I have to bill them for it.</p> <p>14 Q. Was it your understanding that</p> <p>15 what he was suggesting is that you take your</p> <p>16 services out of the escrow funds when you</p> <p>17 forwarded them?</p> <p>18 A. Oh, no. No. No. No.</p> <p>19 Q. Don't misunderstand. I am not</p> <p>20 suggesting anything improper.</p> <p>21 A. Yes, you are. A few times you</p> <p>22 asked me these things. It never would have</p> <p>23 occurred to me in a million years. And that</p> <p>24 never occurred to me.</p> <p>25 Q. You do that sometimes like if you</p>	<p style="text-align: right;">Page 207</p> <p>1 Wolfson</p> <p>2 know I just didn't bill for my time in that</p> <p>3 one-line opinion. I just billed for the</p> <p>4 Google search on U.S. Bank.</p> <p>5 Q. Then on December --</p> <p>6 A. I don't recall -- I am sorry.</p> <p>7 I don't recall frankly U.S. Bank.</p> <p>8 I am quite sure a half hour was less than</p> <p>9 the time I actually spent.</p> <p>10 Q. Okay. So December 30, the next</p> <p>11 entry below that, "Telephone calls, MFB,"</p> <p>12 that means Mr. Seward, right?</p> <p>13 A. Yes.</p> <p>14 Q. And Milestone's New York counsel,</p> <p>15 that is Mr. Tisdale?</p> <p>16 A. Right. Now one or the other of</p> <p>17 them told me about the lawsuit, I think at</p> <p>18 that time. Or maybe not at that time but at</p> <p>19 some point if there is a telephone</p> <p>20 conference. If that is the last telephone</p> <p>21 conference then that is when I found out</p> <p>22 about it. Actually, sorry. I take it back.</p> <p>23 January 2nd. No. That is Ed's.</p> <p>24 Never mind.</p> <p>25 Q. Okay. I am still on December 30.</p>
<p style="text-align: right;">Page 206</p> <p>1 Wolfson</p> <p>2 are holding funds in trust from a client in</p> <p>3 advance of fees?</p> <p>4 A. We are in the middle of a dispute</p> <p>5 that is now in suit about it so there --</p> <p>6 Q. I said I understand. It never</p> <p>7 crossed your mind --</p> <p>8 A. Never.</p> <p>9 Q. -- to deduct it from --</p> <p>10 A. Never. Nor do I have any</p> <p>11 suspicion at all that that is what he</p> <p>12 intended to say.</p> <p>13 Q. Okay. I just didn't understand</p> <p>14 the word "deduct" when it means "add"?</p> <p>15 A. He is English. He speaks</p> <p>16 differently.</p> <p>17 Q. Okay. That is fine.</p> <p>18 So the next two pages are your</p> <p>19 invoice for fees.</p> <p>20 For example, on December 15 you</p> <p>21 billed a half hour for letter to Mr. Seward</p> <p>22 re: the bank assignment?</p> <p>23 A. Yes. It was also about that --</p> <p>24 whether the U.S. Bank was someplace I</p> <p>25 recognized so it wasn't just -- for all I</p>	<p style="text-align: right;">Page 208</p> <p>1 Wolfson</p> <p>2 A. December 30.</p> <p>3 Q. You are getting way ahead of me.</p> <p>4 So on December 30 you are billing</p> <p>5 Milestone for 4.2 hours relating to, it</p> <p>6 looks like, principally discussion with</p> <p>7 Milestone's New York counsel?</p> <p>8 A. Well, that is when I had to sort</p> <p>9 through everything that happened in my</p> <p>10 absence. I reviewed everything that had</p> <p>11 gone on theretofore, all the stuff we have</p> <p>12 just been plowing through today.</p> <p>13 The recent e-mails that came in my</p> <p>14 absence and then I discussed it at length</p> <p>15 with Tom Moloney in my correspondence to</p> <p>16 him.</p> <p>17 Q. This is talking about letters to</p> <p>18 Milestone to AES, not telephone conferences</p> <p>19 with Mr. Moloney, right?</p> <p>20 A. I did have a telephone conference</p> <p>21 with him at some point. I may not have put</p> <p>22 it down in my billing but I know I did.</p> <p>23 I know I talked about this with</p> <p>24 him after the fact.</p> <p>25 Q. And then On January 3, letters to</p>

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<p>1 Wolfson</p> <p>2 AES, Mr. Seward and Mr. Tisdale Re: status,</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And then received and reviewed</p> <p>6 Rule B paperwork, total of 2.9 hours?</p> <p>7 A. Yes.</p> <p>8 Q. So you reviewed the complaint</p> <p>9 filed in this matter against AES; is that</p> <p>10 correct?</p> <p>11 A. Yes. I believe I was served with</p> <p>12 process of maritime attachment and</p> <p>13 garnishment.</p> <p>14 Q. That is what that referred to?</p> <p>15 A. I probably went on the docket and</p> <p>16 downloaded whatever I could about it to the</p> <p>17 extent it was provided so I could know what</p> <p>18 was involved since I was now involved in a</p> <p>19 lawsuit as the garnishee of holding the</p> <p>20 funds in question.</p> <p>21 Q. Is it your -- in your experience</p> <p>22 is it common from time to time when you have</p> <p>23 an advance on fees from a client you reach</p> <p>24 the end of the matter and you are charging</p> <p>25 the last bill against those fees and then</p>	<p>1 Wolfson</p> <p>2 Q. Okay. And if at some point during</p> <p>3 the representation you charge fees against</p> <p>4 that because the fees are now earned you</p> <p>5 would report that to the client at that</p> <p>6 time, correct?</p> <p>7 A. I would, yes. It would tell the</p> <p>8 client and I usually would actually confirm</p> <p>9 it again before I even take it just in case</p> <p>10 there is any dispute about it.</p> <p>11 Q. Sure.</p> <p>12 And that is when you are dealing</p> <p>13 solely with a single client and it is just</p> <p>14 your fees, there is no -- you don't have a</p> <p>15 complicated situation. They have given you</p> <p>16 money in advance. You are working against</p> <p>17 the advance and before you draw against it</p> <p>18 you would send a notice to the client and</p> <p>19 make sure that they were in agreement,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. In this case what you told us your</p> <p>23 understanding was is that money that</p> <p>24 belonged to AES at some point when the</p> <p>25 charter party was finalized and the escrow</p>
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<p>1 Wolfson</p> <p>2 returning whatever is left over, if</p> <p>3 anything, that you account for the fees</p> <p>4 charged to the client, you send the client</p> <p>5 some notice that you are charging it against</p> <p>6 the escrow account?</p> <p>7 A. If I was -- if I had funds in the</p> <p>8 escrow account and I was going to take a fee</p> <p>9 from those funds, it would be with the</p> <p>10 permission of the client. I would never go</p> <p>11 ahead and just do that.</p> <p>12 Q. Sure. And that is what really I</p> <p>13 was getting at is that if you are holding</p> <p>14 funds in trust, for example, it is common</p> <p>15 for a lawyer to receive an advance on fees?</p> <p>16 A. Sure. A retainer.</p> <p>17 Q. Technically it is not a retainer</p> <p>18 but that is a different issue. It is an</p> <p>19 advance on fees.</p> <p>20 A. Sure.</p> <p>21 Q. And so when you receive an advance</p> <p>22 on fees it has to go into a trust account,</p> <p>23 correct?</p> <p>24 A. It goes into the same trust</p> <p>25 account, yes.</p>	<p>1 Wolfson</p> <p>2 agreement was finalized that those funds</p> <p>3 would cease to be, in any respect, subject</p> <p>4 to AES's control and would come solely under</p> <p>5 the control of the escrow agreement, the</p> <p>6 Milestone-Estech-Mahoney & Keane agreement,</p> <p>7 correct?</p> <p>8 A. That is what I thought would</p> <p>9 happen.</p> <p>10 Q. So at the moment in time when</p> <p>11 those funds were no longer subject to the</p> <p>12 control of AES wouldn't it be typical to</p> <p>13 send some communication to the beneficiary</p> <p>14 of that trust saying, these funds are</p> <p>15 subject henceforth to the control of this</p> <p>16 other document or this other person making</p> <p>17 sure that they are in agreement with that?</p> <p>18 A. No. There is nothing typical</p> <p>19 about this and to the extent Milestone wants</p> <p>20 to take that position I would expect</p> <p>21 Milestone would be the one making that</p> <p>22 communication.</p> <p>23 This was a self-effecting</p> <p>24 agreement as I saw it. So -- in an ideal</p> <p>25 world would more communication have</p>

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1 **Wolfson**

2 **benefited the situation, of course, but as**
 3 **far as any sort of typical way of doing it**
 4 **or obligation, I think there was none.**

5 Q. And as you sit here today you
 6 cannot pinpoint a moment in time when
 7 that -- sort of referred to as a
 8 jurisdictional change for lack of any better
 9 term, when that 500,000 came out from the
 10 control of the trust agreement AES' control
 11 and moved to the escrow agreement, as you
 12 sit here today you cannot pinpoint when that
 13 occurred?

14 **A. It was when the escrow agreement**
 15 **was signed and finalized.**

16 **As to the exact date I think you**
 17 **asked me before and I don't remember exactly**
 18 **when that occurred.**

19 Q. Doesn't the escrow agreement and
 20 your communications with Mr. Seward say
 21 finalize -- finalization of the escrow
 22 agreement and the charter party?

23 **A. I think the letter agreement that**
 24 **I signed with AES, the final agreement I**
 25 **think it refers to the escrow agreement. I**

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1 **Wolfson**

2 **don't recall it referring to the fixture**
 3 **although it does reference the parties'**
 4 **understanding. That was probably the intent**
 5 **but the literal reading says, prior to the**
 6 **agreement which is the escrow agreement.**

7 Q. Mr. Seward's e-mail to you
 8 referred to both, right?

9 **A. Right. And the parties were**
 10 **negotiating and then I got this draft from**
 11 **them, this is what they want, is this okay**
 12 **with you and positions change and that was**
 13 **okay with him.**

14 Q. With him?

15 **A. Mark Seward, Milestone.**

16 Q. Did you at any point discuss with
 17 Mr. Tisdale's office the complaint in this
 18 case in advance of it being filed?

19 **A. Somebody told me they were doing**
 20 **this. I am not specifically sure whether I**
 21 **spoke to -- it was on the phone. I am not**
 22 **sure whether it was Mark Seward or Tom**
 23 **Tisdale but somebody told me Tom had been**
 24 **retained and there would be an action.**

25 **I am not sure of the exact date.**

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1 **Wolfson**

2 **That is why I was hoping my invoices would**
 3 **show it. Maybe January 2, sometime.**

4 Q. The time charge that we looked
 5 at -- I am sorry, that's --

6 **A. January 3.**

7 Q. Our reference to it is the time
 8 entry on Exhibit 45.

9 **A. I may not have billed for it but I**
 10 **did get a phone call at some point. It was**
 11 **right when they were -- either had filed or**
 12 **were about to file the suit.**

13 Q. Discussing what?

14 **A. Telling me they were going to --**
 15 **they were filing an action. I think they**
 16 **were just concerned they didn't want me**
 17 **releasing the funds.**

18 Q. The January -- your time charge
 19 which is -- your bill which is Exhibit 45,
 20 the time entry for January 3 talks about
 21 received and reviewed Rule B paperwork?

22 **A. Yes.**

23 Q. Is it your recollection that
 24 this -- when you do your time charges you
 25 make every effort to make them as accurate

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1 **Wolfson**

2 as possible? Is that an accurate date?

3 **A. Yes. That is an accurate date I**
 4 **think. Sometimes I prepare and write**
 5 **letters and I have them in draft and I don't**
 6 **actually click the button to send them until**
 7 **a day later, or two days later or sometimes**
 8 **many weeks later. And I do make an effort**
 9 **to be accurate.**

10 **I may not have necessarily billed**
 11 **for everything I did on the case. It is not**
 12 **unusual that I get a phone call and it lasts**
 13 **a minute or two, I may not bill for it.**

14 Q. Is it your custom and practice
 15 when you are holding money in trust or in
 16 escrow that before you disburse that money
 17 to -- either for purposes of charging fees
 18 against it or disburse it to a third-party
 19 that you would confirm with the beneficiary
 20 that they agreed that all conditions
 21 precedent had met and that you were
 22 authorized to move the money?

23 **A. That is a really weird**
 24 **hypothetical. You are talking about a**
 25 **disbursement that has nothing do with this**

<p style="text-align: right;">Page 217</p> <p>1 Wolfson</p> <p>2 situation. I mean, yes, if I was going to</p> <p>3 take client money and do anything with it,</p> <p>4 move it anywhere, I would confirm it with</p> <p>5 the client. But this money was not being</p> <p>6 moved any place. And the agreement was</p> <p>7 already in place.</p> <p>8 Q. You don't think, from your</p> <p>9 perspective AES losing control over the</p> <p>10 money at some point when as you have</p> <p>11 explained your understanding of these</p> <p>12 conditions precedent occurred that doesn't</p> <p>13 constitute the functional equivalent of</p> <p>14 moving the money?</p> <p>15 A. The money did not move and as far</p> <p>16 as how those agreements worked you can</p> <p>17 attack me all you want but ultimately Judge</p> <p>18 Marrero is going to decide whether the funds</p> <p>19 should stay there, should go to Milestone or</p> <p>20 should go to AES.</p> <p>21 MR. WINTON: Objection.</p> <p>22 Non-responsive.</p> <p>23 THE WITNESS: I don't know what</p> <p>24 you want from me. You are saying I</p> <p>25 should have just released it and --</p>	<p style="text-align: right;">Page 219</p> <p>1 Wolfson</p> <p>2 Q. It was your understanding at the</p> <p>3 time that you had two agreements that -- to</p> <p>4 which you were the only common signatory,</p> <p>5 correct?</p> <p>6 A. Yeah. And I also realized that my</p> <p>7 opinion on the matter notwithstanding I</p> <p>8 think I have discussed at length where my</p> <p>9 own inclinations lie, I wasn't willing to</p> <p>10 completely discount AES' position especially</p> <p>11 when Mr. Moloney was saying he would come</p> <p>12 forward with more information and more</p> <p>13 information so I held the money and I</p> <p>14 thought at least it was close enough, my own</p> <p>15 opinion notwithstanding, that it should be</p> <p>16 decided by the court.</p> <p>17 MR. KEANE: Objection.</p> <p>18 Non-responsive, everything after,</p> <p>19 "Yeah."</p> <p>20 In Texas we would say pass the</p> <p>21 witness but no further questions at this</p> <p>22 time.</p> <p>23 EXAMINATION</p> <p>24 BY MS. OROZCO:</p> <p>25 Q. Good afternoon, Mr. Wolfson. My</p>
<p style="text-align: right;">Page 218</p> <p>1 Wolfson</p> <p>2 BY MR. WINTON:</p> <p>3 Q. No. No. You are not listening to</p> <p>4 the question. I think the question is</p> <p>5 fairly simple.</p> <p>6 A. There is no -- I have never been</p> <p>7 involved in any analogous situation. If --</p> <p>8 this is not a case where I am taking client</p> <p>9 money and spending it.</p> <p>10 This is a case where the client</p> <p>11 money is staying where it is supposed to</p> <p>12 stay based on the agreements that were in</p> <p>13 front of me.</p> <p>14 There was no reason, in my view,</p> <p>15 to write anything. If any confirmation</p> <p>16 needed to be done that would be Milestone</p> <p>17 presumably would write something or AES</p> <p>18 would write something. But I was simply</p> <p>19 holding the money.</p> <p>20 It was not my responsibility to</p> <p>21 undertake to notify anyone one way or</p> <p>22 another. In fact, I didn't even know when</p> <p>23 the escrow agreement was finalized or when</p> <p>24 the fixture was finalized. I was the escrow</p> <p>25 agent.</p>	<p style="text-align: right;">Page 220</p> <p>1 Wolfson</p> <p>2 name is a Claurisse Orozco attorney on</p> <p>3 behalf of Milestone Shipping from the</p> <p>4 Tisdale law office.</p> <p>5 I have a few questions to try to</p> <p>6 clear up the record a little bit.</p> <p>7 Referring to the Exhibit --</p> <p>8 A. The number 12 --</p> <p>9 Q. The side letter or the --</p> <p>10 A. That is what I am always looking</p> <p>11 for too. It is like 11 or 12 or something.</p> <p>12 MR. WINTON: No. It was after</p> <p>13 that.</p> <p>14 MS. OROZCO: I just wrote down the</p> <p>15 number.</p> <p>16 MR. WINTON: Here it is. It is</p> <p>17 14.</p> <p>18 BY MS. OROZCO:</p> <p>19 Q. Okay. Exhibit Number 14.</p> <p>20 A. Thank you.</p> <p>21 Q. Which is the letter on the Mahoney</p> <p>22 & Keane letterhead dated December 2 to</p> <p>23 American Energy Services referencing the</p> <p>24 escrow agreement and attached to it is</p> <p>25 Mahoney & Keane 0033 which is e-mail</p>

<p style="text-align: right;">Page 221</p> <p>1 Wolfson</p> <p>2 exchanges between yourself and Mr. Moloney,</p> <p>3 okay?</p> <p>4 A. Yes.</p> <p>5 Q. Who drafted this letter that is</p> <p>6 signed by your firm?</p> <p>7 A. AES and I believe it was</p> <p>8 Mr. Moloney himself who was the lawyer at</p> <p>9 AES.</p> <p>10 Q. Did -- you forwarded this -- you</p> <p>11 testified you forwarded this letter in draft</p> <p>12 to Mark Seward; is that correct?</p> <p>13 A. Yes, I did. He is also an</p> <p>14 English-speaking lawyer.</p> <p>15 Q. Did Mr. Seward propose any changes</p> <p>16 to the letter or any edits?</p> <p>17 A. None.</p> <p>18 Q. Did your firm suggest any edits to</p> <p>19 the letter other than adding the wire</p> <p>20 transfer information which is in the middle</p> <p>21 of the bank details?</p> <p>22 A. I did not nor did I view it as my</p> <p>23 role to do so.</p> <p>24 Q. Now, if you -- if we refer back to</p> <p>25 Exhibits number 11 and 12 -- sorry, Exhibit</p>	<p style="text-align: right;">Page 223</p> <p>1 Wolfson</p> <p>2 supposed to get a letter from you. To which</p> <p>3 I respond, a letter saying what. So we can</p> <p>4 get our funds back where they belong.</p> <p>5 What, I thought I am supposed to</p> <p>6 get escrow agreement -- escrow funds.</p> <p>7 He is like, no, we get these funds</p> <p>8 back.</p> <p>9 I write to Mark, then I understand</p> <p>10 and that is -- we have been through that.</p> <p>11 Q. I just really wanted to know if</p> <p>12 that was the first communication?</p> <p>13 A. It was.</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. WINTON: I am glad to see you</p> <p>16 are not having any better luck than I</p> <p>17 did.</p> <p>18 BY MS. OROZCO:</p> <p>19 Q. Okay. Now, thereafter you forward</p> <p>20 this e-mail to Mr. Seward and at the top</p> <p>21 Mr. Seward responds and says -- at the top</p> <p>22 of Exhibit 11, page M&K0023, "Garth, you can</p> <p>23 confirm the money will be wired back if the</p> <p>24 charter party and escrow are not executed."</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 222</p> <p>1 Wolfson</p> <p>2 11, there was a lot of discussion about this</p> <p>3 exhibit. This is M&K0023 through 0026.</p> <p>4 At the bottom of the first page of</p> <p>5 that e-mail exchange there is the -- your</p> <p>6 summary of a conversation that you had with</p> <p>7 Mr. Moloney; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Where it says that in -- and you</p> <p>10 are writing to Mark and copying others</p> <p>11 including Milestone.</p> <p>12 At the bottom it says, "I just</p> <p>13 received a call from charterer's attorney in</p> <p>14 Ohio."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall when Mr. Moloney</p> <p>18 contacted you during that telephone call,</p> <p>19 was that the first contact you had with him?</p> <p>20 A. Yes. That is why I was confused.</p> <p>21 I got a call completely out of the blue by</p> <p>22 somebody I never heard of, I had no idea</p> <p>23 this interim agreement was necessary, as the</p> <p>24 guy who seemed to know what was going on</p> <p>25 with the negotiations and said, yes, I am</p>	<p style="text-align: right;">Page 224</p> <p>1 Wolfson</p> <p>2 A. Yes.</p> <p>3 Q. Did you ever -- I know I believe</p> <p>4 you asked and answered this but I just</p> <p>5 want --</p> <p>6 A. Yes, I did.</p> <p>7 Q. Okay. You never forward this</p> <p>8 Mark's e-mail to Tom Moloney; is that</p> <p>9 correct?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you ever communicate</p> <p>12 the contents of this e-mail to Mr. Moloney?</p> <p>13 A. I believe at the time I had no</p> <p>14 further telephone communications with</p> <p>15 Mr. Moloney at all. It was all in writing.</p> <p>16 Q. Okay. Now if you can go to</p> <p>17 Exhibit number 14, back to number 14, at the</p> <p>18 top of that page, okay. That is also</p> <p>19 M&K0033.</p> <p>20 It also is the same date as all</p> <p>21 the prior e-mails in Exhibit 11 that we have</p> <p>22 been talking about where you say to</p> <p>23 Mr. Moloney, "We have now been authorized to</p> <p>24 sign the letter agreement to you forwarded</p> <p>25 in draft. Please find a copy attached."</p>

<p style="text-align: right;">Page 225</p> <p>1 Wolfson</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did Mr. Moloney ever come back to</p> <p>5 you and ask you about the authorization to</p> <p>6 sign the letter?</p> <p>7 A. No.</p> <p>8 Q. Did he ever ask you whose</p> <p>9 authorization you sought or you obtained to</p> <p>10 sign the letter?</p> <p>11 A. I didn't speak to Mr. Moloney at</p> <p>12 all until this dispute.</p> <p>13 Q. Back to Exhibit 14, the actual</p> <p>14 letter itself which is page 2 of Exhibit 14,</p> <p>15 M&K0034.</p> <p>16 A. Yes.</p> <p>17 Q. As the signatory of this letter</p> <p>18 did you or did Mahoney & Keane have any</p> <p>19 understanding as to whether or not Mahoney &</p> <p>20 Keane's obligations under this letter would</p> <p>21 ever terminate?</p> <p>22 A. It was my understanding that once</p> <p>23 an acceptable escrow agreement was executed</p> <p>24 that the funds would become the escrow funds</p> <p>25 and this letter would be no more.</p>	<p style="text-align: right;">Page 227</p> <p>1 Wolfson</p> <p>2 BY MS. OROZCO:</p> <p>3 Q. What is your understanding?</p> <p>4 A. My understanding it is the escrow</p> <p>5 funds now but Judge Marrero is going to</p> <p>6 decide that one.</p> <p>7 MS. OROZCO: No further questions.</p> <p>8 EXAMINATION (CONTINUED)</p> <p>9 BY MR. WINTON:</p> <p>10 Q. Just hopefully one.</p> <p>11 You indicated in response to</p> <p>12 Ms. Orozco's question that it was your</p> <p>13 understanding that the trust agreement</p> <p>14 signed with AES would terminate upon the</p> <p>15 funds coming under the control of the escrow</p> <p>16 agreement, is that a fair statement of what</p> <p>17 you said?</p> <p>18 A. Yes.</p> <p>19 Q. Would you agree that as a</p> <p>20 fiduciary it is significant to know when</p> <p>21 those obligations under that letter end?</p> <p>22 A. As a fiduciary, yes, it was my</p> <p>23 obligation to interpret the agreement that</p> <p>24 Mr. Moloney wanted to apply it to enforce</p> <p>25 it.</p>
<p style="text-align: right;">Page 226</p> <p>1 Wolfson</p> <p>2 Q. Did you ever receive</p> <p>3 communications that indicated that the</p> <p>4 escrow agreement was finalized?</p> <p>5 A. I definitely had that indication.</p> <p>6 I can't specifically recall what e-mail it</p> <p>7 came from but I know that I signed it, I</p> <p>8 know Estech signed it and I know Milestone</p> <p>9 must have signed it since they are the ones</p> <p>10 who wanted it.</p> <p>11 Q. Once that confirmation was</p> <p>12 received that the escrow agreement was</p> <p>13 finalized did you have any understanding as</p> <p>14 to where the funds belonged at that time?</p> <p>15 A. Right where they were since the</p> <p>16 escrow account was in fact the same account</p> <p>17 to which the funds were sent.</p> <p>18 Q. Did you have an understanding as</p> <p>19 to what -- which -- what agreement the</p> <p>20 \$500,000 funds are subject to today?</p> <p>21 MR. WINTON: Objection.</p> <p>22 THE WITNESS: Again, in my</p> <p>23 opinion --</p> <p>24 MR. WINTON: Objection. Calls for</p> <p>25 a legal opinion.</p>	<p style="text-align: right;">Page 228</p> <p>1 Wolfson</p> <p>2 It wasn't my obligation to draft</p> <p>3 it for him.</p> <p>4 Q. Wasn't it your understanding --</p> <p>5 wasn't your obligation to understand what</p> <p>6 Mr. Moloney believed, what AES believed the</p> <p>7 terms of the agreement were?</p> <p>8 A. I think I understand that from the</p> <p>9 written word.</p> <p>10 This is the product of negotiation</p> <p>11 not just from Mr. Moloney but obviously</p> <p>12 Mr. Moloney contacted me after he had been</p> <p>13 negotiating it some time with Milestone and</p> <p>14 Estech. I don't know what went into it.</p> <p>15 This is what they wanted to do.</p> <p>16 They wanted me to just interpret it and</p> <p>17 apply it as best I could and I did.</p> <p>18 Q. When did AES ever tell you that</p> <p>19 they just wanted you to interpret it and</p> <p>20 apply it as best you could?</p> <p>21 A. They asked me to be the trustee</p> <p>22 under this agreement that they drafted.</p> <p>23 You can phrase it however you</p> <p>24 like.</p> <p>25 Q. So you inferred from that they</p>

<p style="text-align: right;">Page 229</p> <p>1 Wolfson</p> <p>2 wanted you to interpret it and apply it as</p> <p>3 you understood it, is that a fair statement?</p> <p>4 A. That is what a trustee is supposed</p> <p>5 to do, it is supposed to apply the trust</p> <p>6 agreement and work under the trust</p> <p>7 agreement, not necessarily just what</p> <p>8 Mr. Moloney says after the fact but what the</p> <p>9 agreement says.</p> <p>10 Q. Would you agree that a trustee</p> <p>11 also should make sure that if there is any</p> <p>12 ambiguity whatsoever that the trustee</p> <p>13 clarifies that ambiguity?</p> <p>14 A. I don't necessarily agree with</p> <p>15 that or disagree with that. I don't really</p> <p>16 know.</p> <p>17 This is the agreement they wanted.</p> <p>18 To the extent there is any ambiguity in</p> <p>19 there that is what Mr. Moloney, an attorney,</p> <p>20 wanted. And like I said at one point</p> <p>21 before, for all I know, which is very</p> <p>22 little, he may have wanted it to be</p> <p>23 ambiguous, all right, but from my reading of</p> <p>24 it it was not ambiguous.</p> <p>25 MR. WINTON: Objection.</p>	<p style="text-align: right;">Page 231</p> <p>1 Wolfson</p> <p>2 they had been talking to Estech and Estech</p> <p>3 had asked for a loan and this was simply an</p> <p>4 arrangement with Estech?</p> <p>5 A. I have no idea.</p> <p>6 But the final version of the</p> <p>7 letter did have that language in there which</p> <p>8 seemed to be addressing Mr. Seward's</p> <p>9 concern.</p> <p>10 Q. That is how you interpreted it?</p> <p>11 A. That is how I interpreted it.</p> <p>12 Could it have been more emphatic,</p> <p>13 clearer? Perhaps. But it seemed to be</p> <p>14 addressing it and Mr. Seward approved it.</p> <p>15 (Continued on next page)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 230</p> <p>1 Wolfson</p> <p>2 Non-responsive.</p> <p>3 BY MR. WINTON:</p> <p>4 Q. You said that AES negotiated with</p> <p>5 Milestone. What do you base that on?</p> <p>6 A. Because this guy got my number,</p> <p>7 contacted me out of the blue and told me on</p> <p>8 the phone that this is what was going down,</p> <p>9 that he was going to be sending this</p> <p>10 \$500,000 but he needed a letter from us</p> <p>11 confirming that he could get it back.</p> <p>12 Q. And in what respect did he tell</p> <p>13 you that AES had been negotiating with</p> <p>14 Milestone?</p> <p>15 A. He didn't. I don't recall any of</p> <p>16 those details like that.</p> <p>17 Q. So you assumed that?</p> <p>18 A. It would have been odd indeed,</p> <p>19 quite a coincidence for somebody to call me</p> <p>20 up out of the blue and say they wanted to</p> <p>21 wire me \$500,000 in connection with a</p> <p>22 matter. I mean they must have had prior</p> <p>23 communications with someone but it wasn't</p> <p>24 me.</p> <p>25 Q. Did ever occur to you that maybe</p>	<p style="text-align: right;">Page 232</p> <p>1 Wolfson</p> <p>2 MR. WINTON: I have no further</p> <p>3 questions at this time.</p> <p>4 MS. OROZCO: I have no further</p> <p>5 questions.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 (Time noted: 1:52 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11 <u>GARTH SETH WOLFSON</u></p> <p>12</p> <p>13 Subscribed and sworn to</p> <p>14 before me this day</p> <p>15 of 2011.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 Wolfson</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : Ss</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Steven Neil Cohen, a Registered</p> <p>7 Professional Reporter and Notary Public</p> <p>8 within and for the State of New York, do</p> <p>9 hereby certify: That GARTH SETH WOLFSON,</p> <p>10 the witness whose deposition is herein</p> <p>11 before set forth, was duly sworn by me and</p> <p>12 that such deposition is a true record of the</p> <p>13 testimony given by such witness.</p> <p>14 I further certify that I am not</p> <p>15 related to any of the parties to this action</p> <p>16 by blood or marriage and that I am in no way</p> <p>17 interested in the outcome of this matter.</p> <p>18 I further certify that neither the</p> <p>19 deponent nor a party requested a review of</p> <p>20 the transcript pursuant to Federal Rule of</p> <p>21 Civil Procedure 30(e) before the deposition</p> <p>22 was completed.</p> <p>23 In witness whereof, I have</p> <p>24 hereunto set my hand this 17th day of May</p> <p>25 2011.</p> <p>-----</p> <p>STEVEN NEIL COHEN, RPR</p>	<p>1 Wolfson</p> <p>2 6 Three-page string of 65</p> <p>3 e-mails</p> <p>4</p> <p>5 7 One page e-mail with 66</p> <p>6 attachment of an escrow</p> <p>7 agreement</p> <p>8</p> <p>9 8 Letter of credit 74</p> <p>10</p> <p>11 9 One page e-mail dated 76</p> <p>12 12:08 p.m. December 1</p> <p>13</p> <p>14 10 Two e-mails from Mr. 78</p> <p>15 Seward on December 1</p> <p>16</p> <p>17 11 Four-page series of 80</p> <p>18 e-mails</p> <p>19</p> <p>20 12 Three-page document 100</p> <p>21 Bates stamped 027, 028,</p> <p>22 029</p> <p>23</p> <p>24 13 E-mail 105</p> <p>25</p>
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1 Wolfson
2 DEPOSITION ERRATA SHEET
3 Assignment No. 319710
4 Case Caption: Milestone vs. Estech
5 DECLARATION UNDER PENALTY OF PERJURY
6 I declare under PENALTY OF PERJURY
7 that I have read the entire transcript of
8 my Deposition taken in the captioned
9 matter or the same has been read to me,
10 and the same is true and accurate, save
11 and except for changes and/or corrections,
12 if any, as indicated by me on the
13 DEPOSITION ERRATA SHEET hereof, with the
14 understanding that I offer these changes
15 as if still under oath.
16 _____
17 GARTH SETH WOLFSON
18 Subscribed and sworn to on the _____ day
19 of _____, 2011 before me,
20 _____
21 Notary Public,
22 in and for the State of _____.
23
24
25

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2 DEPOSITION ERRATA SHEET
3 Page No. _____ Line No. _____ Change to: _____
4 _____
5 Reason for change: _____
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8 Reason for change: _____
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17 Reason for change: _____
18 Page No. _____ Line No. _____ Change to: _____
19 _____
20 Reason for change: _____
21 Page No. _____ Line No. _____ Change to: _____
22 _____
23 Reason for change: _____
24 SIGNATURE: _____ DATE: _____
25 GARTH SETH WOLFSON

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2 DEPOSITION ERRATA SHEET
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22 _____
23 Reason for change: _____
24 SIGNATURE: _____ DATE: _____
25 GARTH SETH WOLFSON

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